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IN THE

Supreme Court of the United States

October Term, 1974
No. 74-581

CALIFORNIA MOVING & STORAGE ASSOCIATION, *et al.*,
Petitioners,

vs.

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA,
Respondent.

Petition for Writ of Certiorari to the Supreme Court of the State of California.

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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA,
Respondent.

Petition for Writ of Certiorari to the Supreme Court of the State of California.

Petitioners pray that a writ of certiorari be issued to review the Orders of the Supreme Court of the State of California (California Supreme Court) entered in this cause (S.F. No. 23062) on July 17, 1974, and August 28, 1974.

Orders Below.

The Orders of the California Supreme Court were rendered without opinion. They resulted from a petition for a writ of review of two Decisions of the Public Utilities Commission of the State of California (Commission). The Decisions of said Commission (Nos. 81518 and 82035) have not as yet been reported. They are printed in full as Appendices "A" and "B" hereto.

Jurisdiction.

An Order of the California Supreme Court denying petitioners' Petition for Writ of Review was entered on July 17, 1974. A timely Petition for Rehearing of said Order was filed by petitioners on August 1, 1974. It was denied by the California Supreme Court on August 28, 1974. The jurisdiction of this Court is conferred by 28 USC §1257(3).

Constitutional Questions Presented for Review.

1. Whether the Decisions and accompanying Orders of the Commission establishing pre-move estimating rules governing transportation charges to be assessed and collected by household-goods carriers from shippers in fact set maximum rates and charges which are lower than the minimum rates and charges theretofore establish by the Commission for such transportation, without giving proper notice and an opportunity to be heard in violation of the due-process clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States.

2. Whether the Decisions and accompanying Orders of the Commission requiring the payment of fines by household-goods carriers for underestimates establish a conclusive presumption of guilt and deny to the carrier its right to a hearing, in violation of the due-process clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States.

Constitutional Provisions, Statutes and Regulations Involved.

1. United States Constitution, Amendment V, provides in part:

> "[N]or shall any person . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

2. United States Constitution, Amendment XIV, provides in part:

> "[N]or shall any State deprive any person of life, liberty, or property, without due process of law. . . ."

3. Chapter 7 of the Public Utilities Code of the State of California (Sections 5101 to 5319, inclusive, West 1956 and 1974 Suppl.) governing the regulation of household-goods carriers, Appendix "C" hereto.

4. Decision No. 82157 of said Commission dated November 20, 1973, setting forth the regulations (revised tariff rules) regulating underestimating, Appendix "D" hereto.

Statement of the Case.

This petition has as a backdrop action taken by the Commission pursuant to legislative mandate in 1963 wherein it established minimum rates and accessorial charges to be observed and collected by household-goods carriers [Decision No. 65521, 61 Cal. P.U.C. 94 (1963)]. As required by statute and by California Supreme Court mandate, such rates and charges were

predicated upon the cost of transportation for a reasonably efficient carrier, accompanied by a prior finding that the same are and will be for the future just, reasonable, and nondiscriminatory. [See Section 5191 of the California Public Utilities Code, Appendix "C" hereto, p. 38, and *California Manufacturers Association v. Public Utilities Commission,* 42 Cal. 2d 530 (1954).] Since such rates and charges were initially established in 1963, they have been updated to keep pace with the inflationary spiral and other economic requirements. However, during the intervening period, the basic rate-making criteria and findings set forth above have not been altered.

With the foregoing preface, we turn to the facts giving rise to the instant petition. It arises by virtue of action taken by the Commission wherein rules and regulations were established governing a pre-move estimate of the cost of transporting a shipment of household goods, again pursuant to legislative mandate (Section 5245 of the Public Utilities Code),[1] coupled with a legislative resolution directing the Commission to take all necessary steps to eliminate "deliberate" underestimating.[2] Thus, Decision No. 81518 (Appendix "A"

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[1]5245. The commission shall establish rules and regulations controlling the estimates given by a household goods carrier to a shipper of the charges it would make to perform services covered by this chapter. All household goods carriers shall observe such rules and regulations and the failure so to do is unlawful. The commission shall make such rules and regulations as are necessary to the application and enforcement of rules and regulations.

[2]House Resolution No. 57, appearing in the California Assembly Journal of May 22, 1972, reads, in part, as follows:

> Resolved by the Assembly of the State of California, That the Public Utilities Commission is hereby requested to accumulate evidence involving its experience under its new estimating rules; to institute proceedings concerning the

hereto), as supplemented and amended by Decisions Nos. 82035 and 82157 (Appendices "B" and "C" hereto),[3] Case No. 5330, OSH-68, was issued by the Commission as the product of an investigation dealing with the subject of estimating.

While the estimating rules and regulations contained in said decisions ostensibly covered the objectives of Section 5245 and House Resolution No. 57, they in fact established maximum rates for the transportation of household goods at a level below the minimum rates originally established in 1963, as supplemented and amended to date. Such maximum rates were established without notice and an opportunity to be heard.

Having established maximum rates at a level below the heretofore-established minimum rates, the Commission not only prohibited the collection of charges from household-goods shippers above such maximum rates but additionally directed the carriers to pay a fine of the difference between the estimated charges computed on the basis of the lower resulting maximum rates and the higher charges which would obtain under established minimum rates. A double penalty thus results. And, no hearing is provided as a prerequisite to payment of the fine for the purpose of enabling the carrier to show that it is without fault for the underestimate if such be the case.

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problem of deliberate underestimating by household goods carriers; and therefrom to develop regulations and orders which are designed to eliminate deliberate underestimating as a competitive practice; and be it further

Resolved, That the Commission is requested to complete its investigation and to prepare and issue orders and regulations designed to eliminate deliberate underestimating by household goods carriers as a competitive practice by March 15, 1973.

[3]Decision No. 82157, dated November 20, 1973, contains the specific tariff revisions ordered by Decision No. 81518.

Petitioner California Moving & Storage Association (CMSA) is a nonprofit California corporation. Its membership consists of more than 500 household-goods carriers regulated by the Commission. Their collective revenues and tonnage represent the vast majority of total revenue derived by all carriers from the transportation of household-goods, intrastate, between points in California. For many years, petitioner CMSA has appeared in rule- and rate-making proceedings before the Commission, presenting evidence on behalf of its member carriers. Such was the fact in Case No. 5330, OSH-68, which resulted in Commission Decisions Nos. 81518 and 82035, the decisions and accompanying orders here under attack. Individual petitioners constitute a representative group of household-goods carriers operating within California. All are members of CMSA and were parties to the proceedings below.

On November 21, 1972, the Commission issued its Order Setting Hearing in Case No. 5330, OSH-68, Appendix "E" hereto. Such Order recited that "public hearings should be held for the receipt of evidence relating to rates, rules and regulations set forth in Minimum Rate Tariff 4-B." As noted, such action was taken pursuant to Section 5245 of the California Public Utilities Code (Code) requiring the Commission to establish estimating rules for household-goods carriers and House Resolution No. 57 requesting the Commission to "institute proceedings concerning the problem of deliberate underestimating by household goods carriers," and also requesting the Commission to "issue orders and regulations designed to eliminate deliberate underestimating by household goods carriers as a competitive practice." (See footnotes 1 and 2, *supra.*)

At the outset of the hearing held in OSH-68, Hearing Examiner Mallory clearly defined and restricted the perimeters of the proceeding as follows:

> The hearings in this proceeding are limited to estimating practices of household goods carriers. The house resolution refers specifically to deliberate underestimating practices, but we are not so limited to deliberate underestimating practices, although a portion of the staff testimony will relate specifically to that subject. But, the issues in this proceeding relate to estimating practices and will not be broadened to cover any other matters other than estimating practices. (Rep. Tr. Vol. 1, p. 1, January 16, 1973.)

After receiving expressions of parties to the proceeding relating to the scope thereof, including whether the subject of rates was an issue, the Hearing Examiner elaborated upon his prior statement, above quoted, as follows:

> EXAMINER MALLORY: Well, the assigned Commissioner in this proceeding, Mr. Holmes, has concluded that, if we are to make any report to the Legislature, even reasonably close to the deadline specified in the House Resolution [March 15, 1973], we have to limit the issues in this proceeding. And, it was the conclusion of the Commissioner assigned to this matter that we have to limit it to estimating practices as the maximum scope of the hearing in this proceeding, to garner any information that we can within a reasonable period and be able to report to the Legislature anywhere near the deadline specified in the House Resolution.

> Even the broadening of the proceeding to include all estimating practices is greater than the specific matter we were asked to look into by the Legislature. But, because of the difficulty of determining exactly what is a deliberate underestimate from any other underestimate that may be incorrect, we are looking at all underestimating practices of household goods carriers in this proceeding. (Rep. Tr. Vol. 1, p. 8, January 16, 1973).

Decisions Nos. 81518 and 82035 (Appendix "A"), are the outgrowth of the OSH-68 proceeding and go far beyond the establishment of the rules governing estimating practices. Thus, the assailed regulations provide in part as follows:

10. When an underestimate is made by a carrier the maximum charge a shipper shall pay is:

    (a) On distance moves:
        1. The original estimate, plus
        2. 2½ per cent of the original estimate or $15, whichever is greater, plus
        3. The charge, if any, on the Addendum Order for Service.

    (b) On local moves:
        1. The original estimate, plus
        2. 10 per cent of the original estimate or $15, whichever is greater, plus
        3. The charge, if any, on the Addendum Order for Service.

11. The reasonable penalty for underestimating will be the difference between the charge under the applicable minimum rates, on the one hand, and the

charge based on the estimate plus 2½ per cent or $15, whichever is greater, on distance moves, plus the charge on the Addendum Order for Service, or 10 per cent or $15, whichever is greater, on local moves, plus the charge on the Addendum Order for Service, on the other hand.

12. Penalties for underestimates should be paid to the Commission for deposit in the General Fund of the State of California. Each underestimate subject to a penalty shall be reported on a form prescribed by the Commission within thirty days after completion of the transportation service. The report form shall be accompanied by a check or money order made payable to the Commission for the amount of the penalty imposed. (Decision No. 81518, Findings 10-12, Appendix "A", pp. 23-24).

From a practical standpoint, the effect of the application of the foregoing rules is exemplified by the two following hypothetical examples:

Local Moves.

On a local move (50 miles or less), Minimum Rate Tariff 4-B provides for transportation charges calculated on an hourly basis. An estimate of $160 is given a shipper based upon an anticipated number of hours required to accomplish the foregoing local move. Because of traffic congestion, automobile accidents, or other delays requiring increased transit time, actual charges calculated under the tariff amounted to $200. Under the quoted rule, the carrier would be required to collect no more than $176 (the estimate plus 10 per cent), being $24 less than is required to be paid under the tariff and under Section 5193, of the Public

Utilities Code (Appendix "C", pp. 38-39 hereof). Additionally the carrier would be required to pay into the State's General Fund, as a penalty, the sum of $24, the difference between the $200 calculated under the tariff and the $176 collected from the shipper.

Long-Distance Moves.

Under Minimum Rate Tariff 4-B, long-distance rates are based upon hundredweight charges. We assume a shipment moving from Los Angeles to San Francisco is estimated at $1,000. Because of any one of innumerable factors, the estimated weight of the shipment does not accurately reflect the actual weight at the time of loading, and the actual cost calculated under Minimum Rate Tariff 4-B results in a charge of $1,500. Under the Commission's new estimating rules, the carrier could collect only $1,025 (the estimate plus 2½ per cent of the estimate), $475 less than required to be paid under the tariff and under Section 5193. Additionally, the carrier would be required to pay into the State's General Fund, as a penalty, $475.

The chronology of the proceedings commencing with Decision No. 81518, is next set forth. Decision No. 81518 was rendered by the Commission on June 26, 1973. The Commission provided in its Order that Minimum Rate Tariff 4-B shall be amended to accomplish, among other things, the changes in the estimating rules set forth above and herein assailed, the same to become effective 60 days after the effective date of Decision No. 81518. The effective date of the Order was scheduled to be 20 days after June 26, 1973, or July 16, 1973.

Petitioner filed a Petition for Rehearing or Reconsideration of said Decision with the Commission on

July 6, 1973, pursuant to California Public Utilities Code Sections 1731, *et seq.* and within the time period provided by Section 1733. On August 20, 1973, the Commission issued its notice that said Petition for Rehearing or Reconsideration was timely filed pursuant to Section 1733 and that the effective date of Decision No. 81518 had been stayed until further order of the Commission.

On November 20, 1973, the Commission issued Decision No. 82157, which contains the specific tariff revisions ordered by Decision No. 81518. These were originally scheduled to become effective December 23, 1973. By virtue of the filing of a Petition for Writ of Review with the California Supreme Court, the Commission stayed the effective dates of Decisions Nos. 81518, 82035, and 82157 pending the Court's determination of the subject petition.

On August 24, 1973, the Commission issued Decision No. 82035, denying rehearing and amending Decision No. 81518 in the respects set forth in said Order, Appendix "B" hereto. Said Decision provided an effective date of Decision No. 81518 as being October 24, 1973.

On November 21, 1973, petitioner filed a Petition for Writ of Review in the California Supreme Court as provided by California Public Utilities Code Sections 1856 *et seq.* and Sections 5251, 5257, and 5260.

The Federal Constitutional questions sought to be reviewed by this Court were raised by Assignments of Error in that petition as set forth below:

> Finally, the resulting Order of the Commission giving vitality to said finding constitutes an undue

and unlawful taking of property without just compensation, in violation of Article I, Section 13 of the Constitution of the State of California, and of the Fourteenth Amendment to the Constitution of the United States. Not only are the household goods carriers' revenues involuntarily reduced through the maximizing of charges permitted to be collected under the Finding 10 formula, but the felony is compounded in that the carrier is required to pay a penalty into the General Fund of the State of California, assertedly to protect the integrity of the minimum rates under Finding 7. (*CMSA, et al. vs. California Public Utilities Commission*, S.F. No. 23062, November 21, 1973, Petition for Writ of Review at 11.)

In petitioner's Memorandum of Points and Authorities attached to the Petition for Writ of Review in the California Supreme Court, these constitutional objections were further amplified as follows:

E. In Utilizing Section 5245 as the Basis for Charging or Collecting Rates Lower Than Those Established Under Section 5191, the Commission Has Unlawfully Provided for the Taking of Property Without Just Compensation and Without Due Process of Law in Violation of Article I, Section 13, of the California Constitution and also in Violation of the Fourteenth Amendment to the Constitution of the United States.

* * * * *

By Decisions Nos. 81518 and 82035, the Commission has, as heretofore stated, utilized Section 5245 as the basis for requiring that carriers charge or collect rates lower than those established under

Section 5191 in that where an underestimate occurs, the carriers are now required to reduce their charges to the amount set out in an estimate plus an increment thereof plus charges for items listed on an Addendum Order for Service. . . . In addition, the Commission now fines the carrier in a sum equal to the difference between the estimated charges allowed under the Commission's Decision No. 81518 and the charges calculated under Minimum Rate Tariff 4-B. In short, the carrier is deprived of collecting the revenue to which it is entitled under Section 5191. Additionally, the carrier loses revenue by reason of its being fined the difference between the estimated charges and charges calculated under Minimum Rate Tariff 4-B.

Any reduction in rates which would produce revenue below that which would accrue under Section 5191 and rates established thereunder, obviously constitutes an unlawful taking of property. We do not object to a fine given in relation to an appropriate estimating rule under Section 5245 and so indicated to the Commission in the case below. But this fine is one that is in effect a doubling-up process wherein the fine has the effect of requiring carriers to pay double the amount by paying the fine and losing the revenue under the estimating formula set out in Finding 10. [See App. "A" p. 23.] This, then, constitutes a taking of property without just compensation in violation of the California and United States Constitutions.

The California Constitution in Article I, Section 13, provides, in part, that no person shall

'be deprived of life, liberty or property without due process of law;'. The Fourteenth Amendment to the Constitution of the United States similarly provides that no State shall 'deprive any person of life, liberty or property without due process of law;'. Where a State has conferred power upon one of its agencies to perform a certain function involving the use of discretionary power, the performance of such function by the agency is a sufficient action of the State within the contemplation of the guarantee of the Fourteenth Amendment. *San Francisco Gas Company vs. San Francisco* (1911) 189 Fed. 943. (*CMSA, et al. vs. California Public Utilities Commission, supra,* Petitioner's Memorandum of Points and Authorities in Support of Petition for Writ of Review, at 34.)

By Order dated July 17, 1974, the California Supreme Court denied the Petition for Writ of Review. On August 1, 1974, petitioner filed a Petition for Rehearing with the California Supreme Court. In that Petition the Federal Constitutional questions sought to be reviewed by this Court were reiterated:

> On a specific basis, the petitioners have charged in the course of their Petition for Writ of Review and herein reiterate that Commission Decisions Nos. 81518 and 82035 are fatally inconsistent with contemporaneous Commission Decisions; that the Commission has adopted rules which serve to emasculate the minimum rate provisions of Minimum Rate Tariff 4-B without any prior notice or accompanying opportunity to be heard by the affected carriers. . . . Finally, we assert that such rules unlawfully provide for the taking of

properly without just compensation and without due process of law, all in violation of Article I, Section 13, of the California Constitution and of the Fifth and Fourteenth Amendments to the Constitution of the United States. (*CMSA, et al. vs. California Public Utilities Commission,* S.F. No. 23062, August 1, 1974; Petition for Rehearing, at 3-4.)

By Order dated August 28, 1974, the California Supreme Court denied the Petition for Rehearing.

On September 24, 1974, the Commission issued Decision No. 83505 (Appendix "F" hereto). This Decision vacated the stay of Decisions Nos. 81518, 82035, and 82157, and set the effective date of the specific tariff revisions as November 23, 1974.

ARGUMENT.

The Orders of the California Supreme Court upholding Commission Decisions Nos. 81518 and 82035, Appendices "A" and "B" hereto, totally ignore numerous decisions of this Court holding that, under circumstances such as exist in this case, a person cannot be deprived of property without minimum due-process safeguards.

The Commission Decisions referred to above deny petitioners due process of law in two interrelated respects:

Initially, the Decisions set maximum rates for the transportation of household-goods shipments where estimates are given, yet the Hearing Examiner specifically limited the evidence to "estimating practices." Setting maximum rates without providing an opportunity to present evidence on the question of the reasonableness of those rates denies to petitioners due process of law; and

Secondly, where the maximum rates set by Decision No. 81518 are below the minimum rates previously established and still in effect, the Commission has ordered carriers to pay what it describes as a "fine" or "penalty;" such "fine" or "penalty" to be equal to the difference between the charges computed through the application of the lawfully established minimum rates and the charges computed through the lower maximum rates herein assailed. The carriers are conclusively presumed guilty of an unfair business practice, and no hearing on the question of culpability is provided. Such a procedure clearly constitutes a taking of petitioners' property without due process.

I.

The Commission Arbitrarily Established Maximum Rates to Be Observed by Household-Goods Carriers in a Proceeding Limited to Estimating Practices, in the Course of Which It Denied to Such Carriers Due Process of Law.

Commission Decision No. 81518 was ostensibly concerned solely with estimating rules under Section 5245, but in practice it has established a rate ceiling for all shipments handled by carriers where estimates are given. Clearly, by prohibiting a carrier from charging more than its estimate plus 2.5 per cent, or $15, whichever is greater, on distance moves, or its estimate plus 10 cer cent, or $15, whichever is greater, on local moves, plus any charges contained in an addendum order and agreed to by the shipper, a rate ceiling is established. The Commission in Decision No. 79571, not yet published, in Case No. 5330, OSH-49, 73 Cal. P.U.C. 17 (1972), the predecessor proceeding involving household-goods estimates, specifically admitted that such would be the case. Referring to a proposal by the Commission's staff that carriers' charges be limited to their estimate plus 10 per cent for distance moves, the Commission therein stated:

> In our opinion, the staff proposal creates more problems than it solves, would be prohibitively costly to implement, *and is an indirect attack on the minimum rate structure*. Basically, the staff proposal would convert estimates into bids which, upon acceptance by the shipper, would constitute a binding figure on the carrier requiring it to charge no more than 110 percent of the estimate or the minimum rate, whichever is lower.

To the extent that the proposal permits rates lower than the tariff on the basis of a bid means that a carrier which determines that it can make a profit on a haul for less than the minimum rate may charge less than the minimum rate. For instance, if a particular move would cost $200 under tariff rates but a carrier determines that it could make the move profitably for $175, under the staff proposal the carrier could estimate the job at $160 and legally be able to charge $176 for a move that otherwise would require a $200 charge. Any time a carrier wishes to do a job for less than the minimum rate, all it need do is give a low estimate. Thus, the stability of the minimum rate structure is undermined, and rate wars are encouraged. *If an assault is going to be made on the minimum rate structure, and we express no opinion on the merits of such an assault, it should be done directly in a proceeding which clearly tells all interested parties that the minimum rate structure is under attack. It should not be done under the guise of amending estimating rules.*

Further, under a rule that says the lower of the estimate or the tariff will be the rate, but if there is no estimate, then the carrier can charge all the traffic will bear, no aware shipper would move his household goods without requiring an estimate. *Thus, the minimum rates are converted into maximum rates. Again, we express no opinion on the desirability of this result, but if the result is intended it should be done in a proceeding which gives express notice of the intention.* (Emphasis supplied.) (73 Cal. P.U.C. at 25-26.)

While it is true that estimates are not required under Decision No. 81518, it is also true, as the Commission acknowledged in the above quotation that no aware shipper will henceforth move his goods without an estimate. And, from a competitive standpoint, no carrier could refuse to give estimates and long remain a viable business entity.

Commission Decision No. 81518 thus involved setting maximum rates for the vast majority of household-goods shipments moving within California. The Commission took this action without investigating or deciding whether these rates would provide reasonable compensation for the carriers. On this basis, the Commission's action was obviously arbitrary and unreasonable. As this Court held in *San Diego Land and Town Co. v. City of National City*, 174 U.S. 739, 752 (1898), a board or other body to which rate-making power is delegated has no right to fix rates arbitrarily and without investigation, or without exercising its judgment or discretion to determine what is fair and reasonable compensation. Although this case is of long standing, the principle which it enunciates is still valid and has been affirmed by this Court many times. See also *Morgan v. United States*, 298 U.S. 468, 480 (1935), wherein the Court held that rate making carried with it fundamental procedural requirements, including a full hearing and proper admission and consideration of evidence relating to rates.

Not only did the Commission fail to consider the reasonableness of the maximum rates which they established but they did not even allow petitioner the fundamentals of a fair hearing on the subject of rates. The decisions of this Court have consistently held that due process requires such a hearing before maximum

rates are set for a regulated business. *American Bridge Co. v. Railroad Commission,* 307 U.S. 486 (1939); *Morgan v. United States,* 304 U.S. 1 (1938); *Railroad Commission v. Pacific Gas & Electric,* 302 U.S. 388 (1937); *West Ohio Gas Co. v. Commissioner* (No. 1) 294 U.S. 63 (1934).

The long-established position of this Court in such matters is best summarized by the oft-cited passage from *Ohio Bell Telephone Co. v. Commissioner,* 301 U.S. 292, 304-5 (1936):

> Regulatory commissions have been invested with broad powers within the sphere of duty assigned to them by law. Even in quasi-judicial proceedings their informed and expert judgment exacts and receives a proper deference from courts when it has been reached with due submission to Constitutional restraints (citations omitted). Indeed, much that they do within the realm of administrative discretion is exempt from supervision if those restraints have been obeyed. All the more insistent is the need, when power has been bestowed so freely, that the 'inexorable safeguard' (citation omitted) of a fair and open hearing be maintained in its integrity. (citations omitted) The right to such a hearing is one of the 'rudiments of fair play' (citation omitted) assured to every litigant by the Fourteenth Amendment as a minimal requirement. (Citations omitted.)

Petitioner acknowledges that the Commission's Order Setting Hearing in Case No. 5330, OSH-68 (Appendix "E" hereto), is broad enough to include an inquiry into the matter of rates. However, the Hearing Examiner, as heretofore quoted, specifically limited the

introduction of evidence to estimating practices. This was done at the direction of the assigned Commissioner (See pp. 7-8, *supra*). While the type of hearing required by due process may vary depending on the type of action proposed to be taken, it is clear that the requirements of due process cannot be satisfied by a proceeding in which all evidence concerning the very thing decided was excluded. See *Londoner v. Denver*, 210 U.S. 373, 385-86 (1908). Petitioners assert that, at the very least, they were entitled to an opportunity to submit evidence on the question of rates before the Commission took action setting rates by the device limiting the maximum charges collectible for the transportation of household goods.

II.

The Imposition of Fines or Penalties Without a Hearing Deprives California Household-Goods Carriers of Property Without Due Process of Law.

Commission Decision No. 81518 does more than set maximum rates in its accompanying order amending Minimum Rate Tariff 4-B. Because of the roundabout manner in which these rates were set, an irreconcilable conflict within Minimum Rate Tariff 4-B has been created. By law, the carriers cannot charge less than the minimum rates. On the other hand, where an estimate is given, the carriers by Commission Order cannot charge more than the estimate plus 2.5 per cent in distance moves, or 10 per cent in local moves, plus charges in addendum orders, if any. The response of the Commission to this conflict is to fine the carrier every time the estimated charge falls below the charge resulting from the established minimum rates, the fine to equal the amount of the difference. The Commis-

sion makes it abundantly clear in its Decision that punitive measures are intended; the terms "fine" and "penalty" are used repeatedly:

> 6. Some form of *penalty* to the carrier is necessary to insure that accurate estimates will be made by the carriers' employees (Decision No. 81518, Finding 6, Appendix "A" at p. 22).
>
> . . .
>
> (b) a *fine,* greater than the amount of the underestimate is needed to encourage more accurate estimating by household goods carriers. CSMA's proposal will not be adopted. (Decision No. 81518, Finding 8, Appendix "A" at p. 22).
>
> 11. The reasonable *penalty for underestimating* will be the difference between the charge under the applicable minimum rates, on the one hand, and the charge based on the estimate plus 2½ per cent or $15, whichever is greater, on distance moves, plus the charge on the Addendum Order for Service, or 10 per cent or $15, whichever is greater, on local moves, plus the charge on the Addendum Order for Service, on the other hand.
>
> 12. *Penalties for underestimates* should be paid to the Commission for deposit in the General Fund of the State of California. Each underestimate subject to a *penalty* shall be reported on a form prescribed by the Commission within thirty days after completion of the transportation service. The report form shall be accompanied by a check or money order made payable to the Commission for the amount of the *penalty* imposed. (Decision No. 81518, Findings 11, 12, Appendix "A" at pp. 23-24.) (Emphasis supplied.)

The impact of these penalties is both obvious and staggering. Initially, each penalty is a direct out-of-pocket loss to the carrier. In addition, the dual aspect of the Commission's Decision has the potential to cripple the operation of the carriers and as a by-product deprive the public of necessary service. In cases of underestimating not only is the carrier forced to collect less than the applicable minimum rate, but in addition he must pay a fine. The less that the carrier is permitted to collect, the larger the fine. It is not difficult to imagine how these penalties subject the carrier not only to monetary losses but also to the possible loss of his entire business.

Despite the serious impact of these penalties, no procedural safeguards are provided. The Commission Order requires the carriers to report all underestimates within thirty days and to accompany such reports with a check for the penalties. No provision is made for granting the carrier a hearing to determine the validity of the penalty in any particular case. Such an Order is a clear deprivation of the carrier's property without due process.

It is axiomatic that a state agency cannot deprive a person of his property without providing him with an opportunity to be heard. The statement of this Court in *Fuentes v. Shevin*, 407 U.S. 67, 80-81 (1972), illustrates the importance and necessity of a hearing:

> The Constitutional right to be heard is a basic aspect of the duty of government to follow a fair process of decision making when it acts to deprive a person of his possessions. The purpose of this requirement is not only to insure abstract fair play to the individual. Its purpose, more particu-

> larly, is to protect his use and possession of property from arbitrary encroachment and to minimize substantially unfair or mistaken deprivations of property . . .

See *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969); *Cf. Bell v. Burson*, 402 U.S. 535 (1971); and *Goldberg v. Kelly*, 397 U.S. 254 (1970).

Petitioners do not contend that a hearing must necessarily be held before imposition of fines on the individual carriers but only that some hearing must be given before final deprivation of the carrier's property. This principle was recently reaffirmed in *Mitchell v. W. T. Grant Co.*, ... U.S. ...., 94 S.Ct. 1895, 1902 (1974), wherein the Court quoted with approval the statement that:

> [W]e have repeatedly held that no hearing at the preliminary stage is required by due process so long as the requisite hearing is held before the final administrative order becomes effective. . . .
>
> * * *
>
> It is sufficient, where only property rights are concerned, that there is at some stage an opportunity for hearing and a judicial determination. [*Ewing v. Mytinger and Casselberry*, 339 U.S. 594, 598-99 (1950)].

The Commission's Decision presumes that an underestimate by a carrier is always due to the fault of the carrier and thus is always an unfair business practice.[4] This unequivocal presumption is clearly unjus-

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[4]Commission Decision No. 81518, Finding 5 (Appendix "A", p. 22), states:

> Because of the difficulty of determining whether an underestimate is deliberate, and because underestimates, wheth-

tified. A shipper, knowing that the carrier is bound by his estimate, may deliberately conceal goods to be shipped or otherwise mislead the estimator. While an Addendum Order for Services might cover the situation where the shipper requests or obviously needs additional services, it could not be expected to handle, for example, deliberate fraud. In any case, the shipper could simply refuse to sign the Addendum Order, giving the carrier the choice of abandoning the move, with an obvious revenue loss, or of continuing with the move and facing not only a loss but a fine as well. In a local move (50 miles or less), where charges are based on hourly rates, numerous imponderables exist which could easily result in actual charges greater than the estimate without the fault of the carrier.[5] As this Court has recently reiterated, state action based on application of a "fault" standard is "inherently subject to factual determination and adversarial input." *Mitchell v. W. T. Grant Co.*, ... U.S. ...., 94 S.Ct. 1895, 1905 (1974). See *Bell v. Burson*, 402 U.S. 535, 541 (1971).

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er or not deliberate, constitute an unfair business practice and may tend to mislead or deceive the uninformed shippers of household goods, additional rules designed to minimize underestimates are required.

[5]Commission Decision No. 79571, 73 Cal. P.U.C. 17, 23 (1972), contains the following statement:

> Imponderables which neither the shipper nor the carrier can control on a local move include: delays caused by traffic congestion, bad weather, and railroad crossings, and delays caused by accidents on the freeways and highways.
>
> Imponderables controlled by the shipper but not the carrier include: additional packing not contemplated at the time of the estimate were expected to be disposed of by other means, such as a garage sale; and the time it takes the moving men to arrange furniture at the point of destination.

Such conclusive presumption of carrier fault which forecloses important interests without opportunity for a hearing does not meet the fundamental requirements of due process. As this Court stated in *Vlandis v. Kline,* 412 U.S. 441, 446 (1973):

> Statutes creating permanent irrebutable presumptions have long been disfavored under the due process clause of the Fifth and Fourteenth Amendments.

Even if the Commission's presumption accurately reflected the facts in most cases—and we assert it does not—it is no less objectionable. Where the carriers are subject to the loss of substantial amounts of money as a result of the Commission's presumption, they must be given the opportunity to show, in any particular case, that the underestimate was not the result of unfair business practices by the carrier. *Vlandis v. Kline, supra,* 412 U.S. at 452. See *USDA v. Murray,* 413 U.S. 508 (1973); *Stanley v. Illinois,* 405 U.S. 645 (1972).

Should a carrier not send in his required penalty payment within thirty days, he would be in violation of a Commission Order. This violation would in turn subject him to separate and additional civil and criminal penalties.[6] Of course, a hearing is required by statute

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[6]California Public Utilities Code Section 5311 provides:

> Every household goods carrier and every officer, director, agent, or employee of any household goods carrier who violates or who fails to comply with, or who procures, aids, or abets any violation by any household goods carrier of any provision of this chapter, or who fails to obey, observe, or comply with any order, decision, rule, regulation, direction, demand, or requirement of the commission, or of any operating permit issued to any household goods carrier, or who procures, aids, or abets any household goods carrier in its failure to obey, observe, or comply with any such

before these additional penalties may be imposed.[7] This latter hearing is no substitute for that denied the carriers on the estimating penalty since its availability depends on subjecting the carrier to severe additional penalties as outlined above. See *Ex Parte Young*, 209 U.S. 123 (1907). However, the statutory scheme does suggest a readily available alternative to the unconstitutional procedure set up by Decision No. 81518. Since there is an established statutory method for imposition of penalties by the Commission which provides proper procedural safeguards, there is no reason why the Commission should be allowed to rely on conclusive presumptions and to deny the carriers a hearing on these particular penalties.

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order, decision, rule, regulation, direction, demand, requirement, or operating permit, is guilty of a misdemeanor, and is punishable by fine of not more than five hundred dollars ($500) or by imprisonment in the county jail for not more than three months, or both.

California Public Utilities Code Section 5313 provides:

Every household goods carrier and every officer, director, agent, or employee of any household goods carrier who violates or who fails to comply with, or who procures, aids, or abets any violation by any household goods carrier of any provision of this chapter, or who fails to obey, observe, or comply with any order, decision, rule, regulation, direction, demand, or requirement of the commission, or of any operating permit issued to any household goods carrier, or who procures, aids, or abets any household goods carrier in its failure to obey, observe, or comply with any such order, decision, rule, regulation, direction, demand, requirement or operating permit, is subject to a penalty of not more than five hundred dollars ($500) for each offense.

[7]California Public Utilities Code Section 5317 provides:

Actions to recover penalties under this chapter shall be brought in the name of the people of the State of California, in the superior court of the county, or city and county, in which the cause or some part thereof arose, or in which the corporation complained of, if any, has its principal place of business, or in which the person, if any, complained of, resides. The action shall be commenced and prosecuted to final judgment by the attorney of the commission.

The Commission has had no difficulty in enforcing its previous orders through appropriate proceedings where provision is made for hearings. If the Commission wishes to forbid underestimates, it should simply issue an order to that effect. Violations of that order could then be dealt with in the established, constitutional manner.

Finally, Decision No. 82157 of the Commission dated November 20, 1973, Appendix "D" hereto, has attached as a part of its Order certain tariff pages pertinent to this petition. Paragraph 6 of Item 33.7 contained in Original Page 7-BBBB, provides for a hearing through the application of Articles 7 and 8 of the Household Goods Carriers Act (Appendix "C", pp. 48-49; Sections 5285 and 5317) where deliberate underestimating occurs. Absent a finding of deliberate underestimating, the Commission, as heretofore stated, invokes a "fine" and the carrier is required to pay a "penalty" into the State Treasury without an opportunity to be heard regardless of the cause of the underestimate. Thus, in the latter situation, the conclusive presumption of carrier fault is imputed to the carrier denying the latter the fundamental requirements of due process. See *Vlandis v. Kline*, 412 U.S. 441, 446 (1973).

Conclusion.

For the reasons hereinabove set forth, petitioner requests that a Writ of Certiorari be issued to the California Supreme Court so that the obviously unconstitutional actions of the Commission may be overturned.

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KNAPP, STEVENS, GROSSMAN & MARSH.

APPENDIX "A."

Decision No. 81518, Dated June 26, 1973, in Case No. 5330, OSH-68.

Decision No. 81518

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

In the Matter of the Investigation into the rates, rules, regulations, charges, allowances, and practices of all household goods carriers, common carriers, highway carriers, and city carriers relating to the transportation of used household goods and related property.	Case No. 5330, OSH 68 (Filed November 21, 1972)

(Appearances are shown in Appendix A of Decision No. 81138).

OPINION

This proceeding was initiated in response to House Resolution No. 57 of the California State Assembly which requested the Commission to investigate the problems associated with deliberate underestimating by household goods carriers as a competitive practice.[1]

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[1]House Resolution No. 57, appearing in the Assembly Journal of May 22, 1972, reads, in part, as follows:

"Resolved by the Assembly of the State of California, That the Public Utilities Commission is hereby requested to accumulate evidence involving its experience under its new estimating rules; to institute proceedings concerning the problem of deliberate underestimating by household goods carriers; and therefrom to develop regulations and orders which are designed to eliminate deliberate underestimating as a competitive practice; and be it further

(This footnote is continued on next page)

The Assembly requested that the Commission issue an order by March 15, 1973. Following public hearings in January and February, the Commission issued an interim order (Decision No. 81138 dated March 13, 1973) establishing additional rules in Minimum Rate Tariff 4-B (MRT 4-B) designed to eliminate the practice of deliberate underestimating by household goods carriers. That decision describes in detail the additional proposals of the Commission staff designed to eliminate other problem areas associated with the estimating practices of household goods carriers and set further hearings for the receipt of evidence on said proposals.[2]

"Resolved, That the Commission is requested to complete its investigation and to prepare and issue orders and regulations designed to eliminate deliberate underestimating by household goods carriers as a competitive practice by March 15, 1973."

[2]It is the staff position that in order to eliminate the problems related to underestimating, tariff revisions in addition to those directed specifically to deliberate underestimating are required. These rule changes are as follows:

(1) On shipments for which an estimate has been issued by the carrier, the carrier shall assess (a) on distance movements no more than the amount of the estimate plus 10 percent or $25 (whichever is greater) and (b) on hourly moves no more than the amount of the estimate plus 25 percent or $25 (whichever is greater), plus all charges resulting from any Addendum Order for Service; or the total charges resulting from application of the rates and charges agreed to in the Confirmation of Shipping Instructions and Rate Quotation issued for the transportation services covered by the estimate and any Addendum Order for Service, whichever is lower. (Proposal 11 in the staff report.)

(2) Provide that estimates can be furnished only in writing and only after visual inspection. Oral estimates would be prohibited. (Proposal 12.)

(3) Establish standards for the preparation of accurate estimates. (Proposal 13.)

(4) Publish, on a quarterly basis, a report of the number of underestimates and total estimates made by individual household goods carriers, as a basis for evaluation and selection of carriers by the public. (Proposal 14.)

Further hearings were held before Examiner Mallory in San Francisco on April 30, May 1 through 4, and May 15 and 16, 1973, and the matter was submitted. In this phase of the proceeding evidence was received from witnesses for fifteen household goods carriers and by a witness appearing for the California Moving and Storage Association (CMSA).[3]

The carrier witnesses selected by CMSA to testify assertedly represent a broad cross-section of the household goods carriers operating in the State. Witnesses appeared for four large household goods carriers which engage primarily in operations in excess of 50 miles; for several carriers which engage primarily in transporting local moves (50 miles or less); and for carriers which engage in special fields such as movement of complete offices and movement of fragile office machines (computers, auxiliary computer hardware, and copy machines).

The carrier witnesses presented evidence bearing on the staff proposals described in footnote 2 (page 2), and on the use of the Addendum Order for Service

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(5) Provide that household goods carriers may accept credit cards as payment for services, on an optional basis. (Proposal 15.)

(6) Require monthly reporting of all underestimates, including estimates for hourly moves. (Proposal 16.) (This proposal was deleted during the course of the second set of hearings because, upon further analysis, it became apparent that monthly reporting could not be accomplished with available staff.)

[3]In the initial phase of the proceeding, evidence was presented by two witnesses appearing for the Commission staff; by witnesses appearing for the County of Orange—Office of Consumer Affairs, the Sacramento County Consumer Protective Bureau, and the Public Interest Law Center; by three members of the public who testified concerning problems arising from household goods moves; and by five household goods carriers, three of whom were testifying on behalf of the California Moving and Storage Association.

document which was incorporated in the rule changes adopted in Decision No. 81138. The testimony of the carrier witness also was directed to the complaints received from public witnesses in the initial series of hearings, and to explanations of the basis for the underestimates reported to the Commission covering transportation conducted in the second and third quarters of 1972.

The several carrier witnesses appearing for CMSA opposed all of the proposals of the Commission staff that remain for consideration in this phase of the proceeding, as well as the requirement for an Addendum Order for Service document established by the order in the interim phase of this proceeding.

At the conclusion of this phase of proceeding, counsel for CMSA summarized the position of that association with respect to the staff proposals which remain for consideration. The position of the association expressed at the conclusion of the hearings differs in several respects from the position expressed by individual carrier witnesses.

The background of the proceeding, the proposals of the Commission staff, the evidence adduced in connection therewith, and the positions of the parties will be discussed under appropriate topic headings.

The Need for Estimates

The average householder has occasion to move from one residence to another only once in several years. It is axiomatic that the householder is unaware of the terms and conditions and services offered by household goods carriers. The householder generally relies upon the representative of the carrier for information on these subjects.

An estimate of the probable cost of services is a valuable tool to the shipper in determining the services desired to be performed. Based on the information in the estimate, the shipper can determine whether it is economical to use a for-hire carrier or arrange to transport the goods himself. If he decides to use a carrier, he can determine whether it is more economical to dispose of part of his goods rather than to ship them and can also determine whether to pack some or all of the goods or have the carrier do the packing. More importantly, the estimate shows the probable total cost of the transportation services and indicates to the shipper the amount of money he must have on hand to pay for the transportation services when the goods are delivered.

It is apparent that the furnishing of estimates of probable cost of service serves several useful purposes and is beneficial to the shipper. No one advocated discontinuance of the practice of furnishing estimates by household goods carriers. The proposals of the Commission staff and suggestions by other parties are designed to eliminate the abuses involved in estimating.

Underestimating

This Commission and the Interstate Commerce Commission have promulgated rules and regulations governing estimating practices of household goods carriers.

The most recent order of this Commission is Decision No. 79571 dated January 11, 1972 in Case No. 5330, OSH 49. That decision, among other things, (a) provided that estimates on distance moves (over 50 miles) shall be in writing and shall follow visual inspection of the goods, (b) required reporting of written estimates, and (c) provided that credit shall be extend-

ed for the amount of the underestimate whenever the final charges exceeded the estimate by 10 percent or $25 (whichever is greater) on distance moves, and by 25 percent or $25 (whichever is greater) on local moves.

For the purposes of presenting data in this proceeding, the Commission staff assumed that underestimates on distance moves are those on which the final charge exceeds the estimate by 10 percent or $25 (whichever is greater). The reports filed by household goods carriers covering transportation services conducted during the second and third quarter of 1972 were analyzed by the staff in Exhibit 68-1. That exhibit shows that there continues to be a substantial number of underestimates. The data in Exhibit 68-1 applicable to the nine largest carriers (based on total gross revenue) show the following:

TABLE 1

Analysis of Reports of Underestimates
Filed by Household Goods Carriers

	Number of			Col. (4)
	Distance Shipments	Written Estimates	Under-Estimates	as % Col. (3)
	(2)	(3)	(4)	(5)
Bekins Moving & Storage	6,942	3,347	985	29.4
Lyon Van & Storage[1]	1,407	635	161	25.3
Pacific Van & Storage	738	147	22	15.0
DeWitt Transfer & Storage	67	34	11	32.3
Chipman Moving & Storage	183	115	30	26.1
Allied Van Lines	1,412	407	91	22.4
Nacal	1,937	615	186	30.2
U. C. Moving Service	312	109	32	29.4
Republic Van & Storage	346	116	43	37.1

[1]Lyon Van Lines, Inc. and Lyon Van & Storage Co.

It is apparent from the data shown in Table 1 that underestimates frequently result under regulations in effect in the second and third quarter of 1972.

Underestimating can be used as a practice to secure business, for the reason that the shipper usually employs the carrier that furnishes the lowest estimate. Uninformed shippers believe the estimate to be a firm price and do not understand that charges will be based on the actual weight transported or number of hours required to perform the packing or other accessorial services. This proceeding is directed to the adoption of rules that will prevent underestimating as a competitive practice, and will provide to shippers all the information they require concerning their residential moves.

Addendum Order for Service

Interim Decision No. 81138 established the requirement for the issuance by the carrier of an Addendum Order for Service document to cover additional services required or requested by shippers and not covered in the carrier's original estimate.

Testimony and exhibits were introduced by respondent carriers to explain the reasons for the underestimates in Exhibit 68-1. The reason advanced most often as the basis for the underestimate was that the shipper added articles to the shipment after the estimate was prepared, or that the shipper requested additional packing or unpacking not covered by the original estimate.

Testimony was received from carrier witnesses that they had issued instructions to their employees and agents to implement the use of the Addendum document. These witnesses stated that they could foresee

difficulty in the use of this document; but, inasmuch as they had little experience with its use, they could refer to no actual incidents where difficulties had arisen.

The Addendum Order for Service document is designed to eliminate underestimates arising from the request for additional services by the shipper and thus should eliminate the greatest cause, in the eyes of the carriers, for underestimates.

With the elimination of underestimates caused by action of the shipper, it is reasonable to assume that the remaining underestimates result from actions of the carrier. The proposals of the staff discussed hereinafter are directed to underestimates resulting from the latter cause.

Estimate as the Maximum Charge

The Commission staff witness proposed the following new tariff rule:

> *Delivery when Actual Charges Exceed Probable Cost of Services.* On shipments for which a probable cost of services has been issued by the carrier, the carrier shall assess and collect no more than either the total amount of the probable cost plus 10 percent or $25.00, whichever is greater, on distance moves or, on hourly moves 25 percent, or $25.00, whichever is greater, of the probable cost of services for transportation, accessorial services and materials it provides, plus all charges resulting from any Addendum Order for Service; or the total charges resulting from application of the rates and charges provided in the tariff for transportation and accessorial services.

The foregoing rule, in effect, requires that the carrier assess no more than the final estimate plus an allowable overage of 10 percent on distance moves and 25 percent on hourly moves.

The staff witness testified that the purpose of the rule is to increase the accuracy of carrier's estimates and to penalize the carrier for gross inaccuracies in making estimates.

The staff witness stated that current estimating rules established in Decision No. 79511 did not result in reducing the incidence of underestimates. It was his conclusion that underestimating would continue unless the Commission established sanctions against the carrier for its underestimates. The staff witness concluded that the most appropriate form of sanction was to place a ceiling on the amount that the carrier could assess, and that the appropriate ceiling is the amount of estimate (plus the allowable overage, and the charges on the Addendum Order for Service).

In its closing argument CMSA agreed that penalties for underestimating are appropriate, but proposed a different solution. CMSA urged that the Commission raise the allowable overage from 10 percent to 15 percent on distance moves, and that the carrier be penalized for an underestimate by paying a fine to the General Fund in the amount that the actual charges exceed the estimate (plus the allowable 15 percent overage, and the charges on the Addendum Order for Service).

The principal reasons advanced by CMSA for this proposal is that it will protect the minimum rates for household goods transportation while providing a penalty for underestimating, and that the staff proposal

would allow unscrupulous carriers to continue to use underestimating as a competitive tool and would not prevent such carriers from undercutting the minimum rates.

The Public Interest Law Center and other consumer groups supported the staff proposal as the best means of reducing deliberate underestimates.

The parties to this proceeding are in agreement that a penalty must be provided in order to provide an incentive to carriers to provide accurate estimates to shippers. Our purpose, then, is to select an appropriate penalty which will minimize underestimates.

We believe that the proposals of the staff and CMSA have merit, but each also has infirmities. The proposal of the CMSA would not provide sufficient inducement because it would merely deprive the carrier of the amount he should have collected, but no more. A fine of the difference between the underestimate and the minimum rate would deprive the carrier of revenue he would forego by his underestimate plus an added amount from his own pocket.

The proposal of the staff has a serious defect in that it could readily be used as a tool or weapon to defeat the minimum rates. A similar proposal was considered by the Commission in OSH 49. Decision No. 79571 found that establishing the estimate, or 110 percent of the estimate, as a firm price from which the carrier cannot deviate is an indirect attack on the minimum rate structure and would encourage rate wars. However, if the estimate (plus an allowable overage) is established as the maximum that the shipper must pay and the carrier is penalized the difference between that amount and the charges under the minimum rates,

the ability to use the underestimate as a tool to defeat the minimum rates would be removed.

In our view, the purpose for the establishment of additional rules concerning estimating is to protect the shipper from paying charges substantially exceeding those which would accrue under the carrier's estimate. Therefore, the allowable overage for error on the estimate should be reduced to 2½ percent or $15, whichever is greater, on distance moves and 10 percent or $15, whichever is greater on local moves. This would decrease the difference between the estimate and the final charges, and thus increase the amount of penalty against the carrier for an underestimate.

Standards for Estimating

The Commission staff urged that standards be set for the preparation of estimates. As part of this proposal, the staff proposed, and the Commission adopted in its interim order, a requirement that seven pounds per cubic foot be the lowest density that could be used as a multiplier when using the "cube sheet" provided in the tariff. CMSA urged that this multiplier be set at eight pounds per cubic foot. There is no evidence in the record to show that CMSA's proposal would be reasonable; therefore, it will not be adopted.

The Commission staff witness also presented suggestions concerning the employment, training, and supervision of estimators (Exhibit 68-4). It was not shown that it is necessary at this time for the Commission to supervise in detail the activities of the estimators employed by household goods carriers. The suggestions made by the staff along such lines will not be adopted herein.

Specialized Services

MRT 4-B applies to used office and store fixtures, including furniture, furnishings, and equipment such as used in an office, store, hospital, library, museum, place of learning, or other institution. [Item 20, paragraph (a)(2)].

Certain household goods carriers specialize in the transportation of office, store, and institutional furniture and fixtures. Carriers who engage in this transportation testified that the services performed in connection therewith differ materially from the services performed in connection with residential moves, and that the shippers are industrial or commercial firms which have traffic managers who are familiar with transportation costs and services.

When entire offices are to be moved, extensive preplanning is necessary. Generally such moves are made after regular working hours of the firms' employees. Goods to be moved are marked for precise placement in the new location. The estimates, if any, furnished by the carrier, often are for budgeting purposes only.

Other carriers specialize in the movement of large office machines such as computers and related hardware, and document reproduction machines. These machines are delicate and require special handling in connection with dismantling and reassembly. Often special equipment is necessary. Estimates are not generally required for these types of moves.

The carriers engaged in specialized services showed that these services are substantially different from the

movement of the household goods and personal effects of individuals from and to residences, and that the additional rules proposed by the Commission staff are not appropriate for such special services. Therefore, the discussion of evidence which follows and the rule changes adopted herein will not apply to the transportation of office, store, and institutional furniture and fixtures.

Written Estimates—Local Shipments

Item 31 of MRT 4-B provides that upon request of the shipper the carrier shall give the shipper a statement of probable costs of service (estimate). For distance moves (over 50 miles) all probable cost of service must be in writing and be issued on prescribed forms, and the probable cost of service must be based on visual inspection of the goods. For local moves under hourly rates the probable cost of service need not be given after visual inspection of the goods and the requirement for a written probable cost of service can be complied with by noting the probable cost of service in the Confirmation of Shipping Instructions and Rate Quotation document.

The Commission staff proposes that if probable costs of service are given on hourly-rated shipments such estimates must be in writing and may only be issued after visual inspection of the goods.

The position of CMSA is that the rules established in our preceding investigation of estimating practices (Decision No. 79571 dated January 11, 1972 in Case

No. 5330, OSH 49) are adequate to protect the public and that no changes in said rules are required.

CMSA reiterated the position of that association taken in OSH 49, as set forth in the margin, concerning the furnishing of written estimates after visual inspection on hourly-rated shipments.[4]

In support of the proposal regarding written estimates for local moves, the staff witness testified that the adoption of the proposal would eliminate oral estimates which are most inaccurate, and also would eliminate estimates where the Addendum Order for Serv-

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[4]The following appears at mimeographed pages 22 and 23 of Decision No. 79571:

"CMSA asserts that regulation of estimating on local moves is impractical and would impose unfair hardships on both shippers and carriers. It argues that where the average revenue from a local move ranges from $52 for some companies to $140 for other companies, it is impossible to estimate, with sufficient accuracy, the final cost in any given move. CMSA cites the various imponderables discussed above, such as traffic congestion, traffic accidents, shippers changing their minds as to the amount of goods shipped and packed, etc. CMSA argues that the prudent carrier could not allow itself to be caught in the trap of being committed to a figure without regard to these imponderables.

"Finally, CMSA states that large and small carriers provide a high percentage of their estimates over the telephone on the basis of information provided by shippers. The carrier witnesses unanimously testified to the substantial expense involved in visual inspections in connection with written estimates and noted the impossibility on local moves of being bound by all estimates based on unconfirmed facts obtained over the telephone. Yet, CMSA acknowledges that customers expect and most carriers prefer to give oral estimates over the telephone to shippers upon request. The carriers say that in large towns, some shippers' concern for privacy make telephone estimates desirable and in small towns, friends, and neighbors of the carriers expect rough approximations over the telephone rather than formal written estimates based on visual inspections. (CMSA's position is in some degree contradictory. In one breath it requests a prohibition on all estimating and in the next breath it says, in regard to local moves, 'customers expect and most carriers prefer to give oral estimates over the telephone to shippers upon request.')."

ice could not be effectively used. The witness stated that carriers still would be allowed to quote rates, but would not be allowed to give oral approximations of the number of hours, weights, or final charges.

No statistics were available to the staff concerning accuracy of estimates on hourly-rated moves, as such estimates are not now required to be reported to the Commission.

Two public witnesses testified concerning the difference between the oral estimates furnished to them and the actual charges assessed on local shipments under hourly rates. Both witnesses desired that their goods be placed in storage. The record indicates that misunderstanding occurred concerning the number of men required to perform the transportation service and amount of packing and other accessorial services required.

The CMSA carriers that engage primarily in local service under hourly rates presented analyses of the revenue derived from local moves. The witnesses showed that their average revenue for local moves ranges from $80 to $175 per shipment. The witnesses also described their current practices with respect to furnishing estimates based on visual inspections. The witnesses indicated that written estimates based on visual estimates were seldom given because the revenue from average-sized shipments is too small in relationship to the time and effort involved in making the estimate. The witnesses testified that they generally quote rates over the telephone and indicate to prospective shippers the approximate time required for each room to be moved. The witnesses also stated that if a so-called "national account" shipper requests an estimate or if

any exceptionally large or difficult move is to be made, a visual inspection would be made and a written estimate would be furnished.

Several of the witnesses offered their opinion of the cost of making an estimate based on visual inspection of the goods.[5] These range from $8 to $60. The latter figure was based on the furnishing of an estimate anywhere within a 50-mile service area. This testimony was presented to back-up the claim that it is uneconomical to make estimates on local moves.

The carrier witnesses also described the problems they would foresee if an Addendum Order for Service is required to be issued. The witnesses indicated that on hourly-rated moves no detailed estimate sheet is completed because weight is not a factor. Therefore, it would be difficult to recognize whether the same amount of goods is made available to the carrier at time of transportation as was covered by the written estimate.

It is clear that household goods carriers do not desire to furnish written estimates based on visual inspection for local moves. The staff proposal does not provide a mandatory requirement upon carriers to provide this service. The staff proposal would apply only if the shipper requests and is furnished a written estimate. Carriers can advise the public that no estimate will be furnished on small shipments. Carriers can continue to quote rates over the telephone.

The staff proposal would result in better service to the public; therefore it should be adopted. When ac-

[5]The opinion testimony regarding costs of providing estimates was not supported by any specific data to show how the opinions were developed.

tual transportation charges exceed the written estimate the same reporting and penalty procedures should apply to goods transported under hourly rates as apply to goods transported under distance rates.

Payment of Charges by Credit Card

The Commission staff witness proposed that carriers be authorized to accept credit cards for payment of transportation charges. The current tariff provisions permit the carrier to extend credit for a period of seven days (exclusive of Saturdays, Sundays, or legal holidays) after presentation of the freight bill. Carriers now must collect cash or its equivalent.

The staff witness testified that the use of credit cards will help the shipper in that he would not have to make prior cash arrangements for payment of charges. The witness stated that the carrier would have a guaranteed payment if a credit card is accepted for payment. The staff witness recommended that the use of the credit card should be at the option of the carrier.

CMSA presented evidence concerning current credit arrangements and data concerning the requirements of the banks that issue the two most popular credit cards.

The record shows that carriers refer to residential shippers as their "C.O.D." customers, and require that such shippers pay cash upon delivery of the goods. The carriers extend credit to their so-called "national account" shippers under the terms provided in the tariff. National account shippers are those firms which deal regularly with household goods carriers and which have established credit arrangements. National account shippers pay the charges for movement of household goods of their employees, and also regularly use house-

hold goods carriers to transport office and institutional furniture and fixtures.

A witness for Bekins Van & Storage Company and Bekins Van Lines, Inc. (Bekins) testified concerning the use of credit cards on interstate shipments. The witness stated that the Interstate Commerce Commission (ICC) had granted Bekins temporary authority for the experimental use of bank credit cards, subject to a payment of a $10 fee for credit investigation in lieu of the bank's usual charges to merchants. The witness stated that only a limited number of shippers had used a credit card on interstate shipments, principally because Bekins' freight charges were substantially greater than the maximum credit available to the cardholder. Bekins has advised the ICC that it no longer would exercise its authority for use of bank credit cards.[6] The Bekins plan called for the banks to extend credit to the shipper without recourse to Bekins.

Security Pacific Bank (MasterCharge) and BankAmericard indicate a willingness to accept business from moving firms, provided the carriers sign their standard merchant agreements. Those agreements (Exhibits 68-53 and 68-54) show that merchant discount rates are negotiated with individual merchants and are based on such elements as (a) anticipated credit card sales volume, (b) compensating bank account deposit balances, (c) costs of supplies and processing, and (d) profit. The merchant rate structure of Bank-

[6]We take official notice of the report and order of the ICC served May 8, 1973 in Ex Parte MC-19, Sub. 16, Practices of Motor Common Carriers of Household Goods (Use of Credit Card Systems) (118 MCC 97), which granted permissive authority to all interstate household goods carriers to use credit cards, subject to ICC approval of the credit plan and to certain reporting requirements.

Americard provides a one to three percent discount on sales and is based on the average amount of monthly sales and average dollar amount of sales drafts.

The witness for Bekins testified that credit card use, if approved for California intrastate household goods operations, could not contain a non-recourse provision because of the statute known as the "Song-Beverly Act of 1971" (Section 1747.90 of the California Civil Code). That statute provides that on billings in excess of $50 the credit card user can notify the issuer of the card that a dispute exists and refuse payment for that billing. Upon such notification the bank would debit the carrier for the full amount of the disputed billing.

CMSA opposes the permissive use of bank credit cards because of the effect of the Song-Beverly Act, and because it believes the sliding scale of charges assessed by banks gives an unfair advantage to larger carriers who would enjoy lower billing rates based on volume. CMSA asserts that the household goods carriers would be unable to collect on those billings charged back from banks on which a dispute is involved.

The reasons advanced by CMSA in opposition to the use of credit cards by household goods carriers are not sufficient to deny the permissive use of such cards to those carriers that desire to use them and which can make mutually satisfactory arrangements with the banks that issue the cards. The advantages of the use of such cards to the public and to the carriers outweigh the disadvantages asserted by CMSA. It is a well accepted fact that Californians make wide use of credit for payments for their everyday purchases. It can be said that we live in a credit card society. Shippers

should have the opportunity to pay for moving their household goods in the same manner that they pay for their other purchases. The variations in rates charged by the banks to merchants for credit card billings are no different than the many discounts on tires, lower insurance costs, or other reduced prices that accrue to some household goods carriers because of their size.

The fact that the Song-Beverly Act makes a nonrecourse provision impossible is not a major impediment to the use of credit cards. The carriers' testimony indicated that not all national account shippers pay within the prescribed seven-day credit period, and their carriers sometimes must take civil court action to collect their charges. Similar court action would be appropriate when charges are billed back to the carrier on credit card shipments pursuant to provisions of the Song-Beverly Act. Bekins indicates that the primary reason for discontinuance of its experimental ICC authority was that its charges exceeded the amount of credit available. This is less likely to occur on local moves and for the shorter distance moves in California.

Waiver of Credit on Underestimates

MRT 4-B currently provides that carriers can extend credit for a 15-day period for the amount of an underestimate. The record shows that few carriers have exercised this authority. It appears that carriers do not generally inform shippers of the opportunity to postpone payments for the difference between the estimate and the final charges.

The Commission staff proposed that shippers be required to make a waiver in writing with respect to credit on underestimates. CMSA and other parties con-

curred in this recommendation. It should be adopted. The existing credit provision shall be modified to apply only to charges under the Addendum Order for Service and the allowable overage.

Findings

1. An underestimate occurs when the final charge exceeds the original estimate by more than (a) 2½ percent or $15, whichever is greater, on distance moves, plus the charge on the Addendum Order for Service, or (b) 10 percent or $15, whichever is greater, on local moves, plus the charge on the Addendum Order for Service.

2. Decision No. 79571 required that household goods carriers report quarterly the number of underestimates made by them on distance moves. A summarization of these reports for the second and third quarter of 1972 reveals that underestimates were made on approximately one-quarter of the total shipments on which estimates were furnished.

3. The foregoing incidence of underestimating is approximately the same as the incidence of underestimating occurring prior to the establishment of estimating rules in Decision No. 79571. Therefore, experience has shown that such rules are not stringent enough to curb underestimates and that additional rules are required if underestimates are to be reduced.

4. Interim Decision No. 81138 dated March 13, 1973 in this proceeding adopted additional rules specifically designed to eliminate the practice of deliberate underestimating referred to in House Resolution No. 57, appearing in the Assembly Journal of May 22, 1972.

5. Because of the difficulty of determining whether an underestimate is deliberate, and because underestimates, whether or not deliberate, constitute an unfair business practice and may tend to mislead or deceive the uninformed shippers of household goods, additional rules designed to minimize underestimates are required.

6. Some form of penalty to the carrier is necessary to ensure that accurate estimates will be made by the carrier's employees. Two methods of providing an appropriate penalty have been proposed.

7. The Commission staff proposed as a penalty for underestimating that the estimate plus an allowable overage of 10 percent be the maximum amount that could be assessed. This proposal would, in many instances, provide charges below those accruing under the established minimum rates. It is the Commission's policy to maintain the integrity of the minimum rates established by it for all classes of carriers. The integrity of the minimum rates would not be maintained under the staff proposal, unless it is modified to require a penalty sufficient to remove the incentive to underestimate.

8. California Moving & Storage Association proposed as a penalty for underestimating that the carrier pay as a fine to the Commission the difference between the actual charge assessed and the estimated charge plus an allowable overage of 15 percent. The method proposed by CMSA has two faults: (a) there is no basis in the record for an allowable overage of 15 percent, and (b) a fine greater than the amount of the underestimate is needed to encourage more accurate estimating by household goods carriers. CMSA's proposal will not be adopted.

9. Decision No. 79571 established an allowance over the estimate of 10 percent or $25 (whichever is greater) on distance moves, and 25 percent or $25 (whichever is greater) on local moves. This allowance was too liberal; it did not achieve its hoped for purpose of limiting the incidence of underestimates. The allowance should be reduced.

10. When an underestimate is made by a carrier the maximum charge a shipper shall pay is:

(a) On distance moves:

1. The original estimate, plus
2. 2½ percent of the original estimate or $15, whichever is greater, plus
3. The charge, if any, on the Addendum Order for Service.

(b) On local moves:

1. The original estimate, plus
2. 10 percent of the original estimate or $15, whichever is greater, plus
3. The charge, if any, on the Addendum Order for Service.

11. The reasonable penalty for underestimating will be the difference between the charge under the applicable minimum rates, on the one hand, and the charge based on the estimate plus 2½ percent or $15, whichever is greater, on distance moves, plus the charge on the Addendum Order for Service, or 10 percent or $15, whichever is greater, on local moves, plus the charge on the Addendum Order for Service, on the other hand.

12. Penalties for underestimates should be paid to the Commission for deposit in the General Fund of the

State of California. Each underestimate subject to a penalty shall be reported on a form prescribed by the Commission within thirty days after completion of the transportation service. The report form shall be accompanied by a check or money order made payable to the Commission for the amount of the penalty imposed.

13. In the event an estimate is given on local moves it will be reasonable to require household goods carriers to prepare written estimates, and to require that such written estimates be based on visual inspection of the goods. The present tariff provisions with respect to the issuance of an Addendum Order for Service shall be applicable to local moves on which a written estimate is furnished.

14. Reasonable provisions with respect to collection of charges by household goods carriers will result if permissive authority is granted to household goods carriers to allow carriers to accept an authorized credit card (as defined in Section 484(d) of the Penal Code) for collection of charges. It is not necessary at this time to specify the terms and conditions under which household goods carriers may accept credit cards.

15. It is reasonable to require that shippers be allowed credit for a fifteen-day period for the amount charged on the Addendum Order for Service and the allowable overage, unless the shipper executes a written waiver of this right.

16. Findings 10, 11, 12, 13, and 14 shall not be applicable to the transportation of used office and

store fixtures, as described in paragraph (a)(2) of Item 20 of MRT 4-B.

17. The Commission staff shall prepare and distribute semiannually a summary of the reports filed by household goods carriers of their underestimates. Such summary shall show the carrier's name, the total number of shipments on which written estimates were furnished, the number of shipments on which penalties were paid because of underestimates, and the total amount of the penalties. The summary may also contain other information that may assist the public in their selection of a carrier.

Conclusions

1. Rules and prescribed forms consistent with the foregoing findings should be established in Minimum Rate Tariff 4-B.

2. The specific revision of Minimum Rate Tariff 4-B to incorporate such rules and forms should be accomplished by the issuance of a separate order, and the revisions should become effective sixty days after this order becomes effective.

ORDER

IT IS ORDERED that Minimum Rate Tariff 4-B shall be amended in accordance with the findings and conclusions in the preceding opinion, that specific revisions of the tariff shall be accomplished by a separate order, and that such revisions shall become effective sixty days after this order becomes effective.

The effective date of this order shall be twenty days after the date hereof.

Dated at Los Angeles, California, this 26th day of June, 1973.

VERNON L. STURGEON
President
THOMAS MORAN
D. W. HOLMES
Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX "B."

Decision No. 82035, Dated October 24, 1973, Denying Rehearing and Amending Decision No. 81518 Per Said Order.

Decision No. 82035

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

In the Matter of the Investigation into the rates, rules, regulations, charges, allowances, and practices of all household goods carriers, common carriers, highway carriers, and city carriers relating to the transportation of used household goods and related property.	Case No. 5330, OSH 68

ORDER DENYING REHEARING AND AMENDING DECISION NO. 81518

A petition for rehearing or reconsideration of Decision No. 81518 was filed by California Moving and Storage Association, Inc., et al. That decision established additional rules in Minimum Rate Tariff 4-B respecting the estimating practices of household goods movers.

The specific errors in Decision No. 81518 asserted by petitioners are numerous. As a result of these alleged errors, petitioners contend that Decision No. 81518 is outside of the evidence of record, in excess of the Commission's jurisdiction and results in a taking of property without due process of law.

Evaluation of the record and the findings of fact in Decision No. 81518 compels us to reject petitioners' claims herein.

Although we conclude that the petitioners have failed to show good cause for granting a rehearing, we do find it necessary to amend Decision No. 81518.

IT IS ORDERED THAT:

1. Rehearing of Decision No. 81518 is hereby denied.

2. Decision No. 81518 is hereby amended as follows:

(a) Page 9, paragraph 1 of Decision No. 81518 is amended to read as follows:

"In its closing argument CMSA agreed that penalties for underestimating are appropriate, but proposed a different solution. CMSA urged that the Commission raise the allowable overage from 10 percent to 15 percent on distance moves, and that the carrier be penalized for an underestimate by paying a fine to the General Fund in the amount that the actual charges ~~exceed the estimate (plus the allowable 15 percent overage, and the charges on the Addendum Order for Service).~~ *are less than the charge based on the applicable minimum rate.*"

(b) Page 12, paragraph 1, lines 1 and 2 of Decision No. 81518 is amended to read as follows:

"*Written Estimates—Local Shipments*

Item 31 of MARTII4-B provides that upon request of the shipper the carrier ~~shall~~ *may* give the shipper a statement of probable costs of service (estimate). . . ."

3. The effective date of Decision No. 81518 is the date of this order.

Dated at San Francisco, California, this 24th day of October, 1973.

VERNON L. STURGEON
President

WILLIAM SYMONS, JR.
J. P. VUKASIN, JR.
THOMAS MORAN
D. W. HOLMES
Commissioners

APPENDIX "C."

Chapter 7. Household Goods Carriers.

(Added Stats. 1951, Chapter 974)

Article 1. General Provisions and Definitions

5101. This chapter may be cited as the "Household Goods Carriers Act."

5102. The use of the public highways for the transportation of property for compensation is a business affected with a public interest. It is the purpose of this chapter to preserve for the public the full benefit and use of public highways consistent with the needs of commerce without unnecessary congestion or wear and tear upon such highways; to secure to the people just and reasonable rates for transportation by carriers operating upon such highways; and to secure full and unrestricted flow of traffic by motor carriers over such highways which will adequately meet reasonable public demands by providing for the regulation of rates of all transportation agencies so that adequate and dependable service by all necessary transportation agencies shall be maintained and the full use of the highways preserved to the public.

5103. Unless the context otherwise requires, the definitions and general provisions set forth in this article govern the construction of this chapter.

5104. In construing and enforcing the provisions of this chapter relating to penalties, the act, omission, or failure of any officer, agent, or employee of any person or corporation, acting within the scope of his official duties or employment, is the act, omission, or failure of the employing person or corporation.

5105. "Corporation" includes a corporation, a company, an association, and a joint stock association.

5106. "Person" includes an individual, a firm, or a copartnership.

5107. "Public highway" includes every public street, road or highway in this State.

5108. "Motor vehicle" means every motor truck, tractor, or other self-propelled vehicle used for transportation of property over the public highways, otherwise than upon fixed rails or tracks, and any trailer, semitrailer, dolly, or other vehicle drawn thereby.

5109. "Household goods carrier" includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, engaged in the transportation for compensation or hire as a business by means of a motor vehicle or motor vehicles being used exclusively in the transportation of used household goods and personal effects, office, store, and institution furniture and fixtures over any public highway in this State. (Amended 1951, Ch. 1726.)

[5110.] (Repealed 1955, Ch. 783.)

5111. This chapter shall not be construed as a regulation of commerce with foreign nations or among the several states, except insofar as such regulation is permitted under the provisions of the Constitution and the acts of the Congress of the United States.

5112. The regulation of the transportation of used household goods and personal effects, office, store, and institution furniture and fixtures in a motor vehicle or motor vehicles being so used exclusively, over any public highway in this state shall be exclusively as provided in this chapter. Any provision of the Public Utilities Act or the Highway Carriers' Act in conflict

with the provisions of this chapter is superseded and repealed. (Amended 1951, Ch. 1726; 1955, Ch. 783; 1969, Ch. 10.)

5113. The transportation of used household goods, personal effects, office, store, and institution furniture and fixtures in any truck or trailer for compensation over any public highway in this State is a highly specialized type of truck transportation. This chapter is enacted for the limited purpose of providing necessary regulation for this specialized type of truck transportation only, and is not to be construed for any purpose as a precedent for the extension of such regulation to any other type of truck transportation not presently so restricted. (Amended 1951, Ch. 1726.)

Article 2. Regulation of Household Goods Carriers

5131. No household goods carriers shall engage in such business for compensation by motor vehicle over any public highway in this State, except in accordance with the provisions of this chapter which is enacted under the power of the State to regulate the use of public highways.

5132. Each household goods carrier shall display on each vehicle operated by it an identification symbol in such form and in accordance with such rules and regulations as the commission may prescribe. The identifying symbols displayed by carriers subject to the Interstate Commerce Commission Order Ex Parte No. MC-41, Identification of Motor Carrier Vehicles, November 17, 1954, effective January 3, 1955, shall serve in lieu of the display requirements of this section, provided such identifying symbols have been recorded by the household goods carrier with the commission. (Amended 1963, Ch. 1839.)

5133. No household goods carrier shall engage in the business of the transportation of used household goods and personal effects, office, store, and institution furniture and fixtures for compensation, by motor vehicle over any public highway in this state, unless there is in force a permit issued by the commission authorizing such operations. (Amended 1972, Ch. 618.)

[5133.5]. (Repealed 1972, Ch. 618.)

5134. Application for permits shall be in writing, verified under oath, and shall be in such form, contain such information, and be accompanied by proof of service upon such interested parties as the commission requires.

5135. Except as provided in Section 5133.5, before a permit is hereafter issued the commission shall require the applicant to establish ability and reasonable financial responsibility to initiate the proposed operations. The commission shall require the applicant to establish his knowledge and ability to engage in business as a household goods carrier by examination. The examination may be written or oral, or in the form of a demonstration of skill or any combination of these, and any investigation of character, experience and any tests of technical knowledge and manual skill which the commission deems are appropriate may be employed. In any examination the qualification of the applicant shall be determined by an appraisal made by a member of the commission's staff. An applicant who has been determined to be unqualified may thereafter establish his qualifications through a subsequent examination; but no subsequent examination shall be taken prior to three (3) months from the date when such

applicant was found to be unqualified. When the staff member shall determine that the applicant is not qualified, then the matter shall be set for hearing and the qualification of the applicant shall be determined by the commission on the basis of evidence of qualifications presented at such hearing, which evidence may include consideration of any written examination of the applicant. When the staff member shall determine that the applicant is qualified, a permit may issue without hearing unless the commission shall consider a hearing desirable, in which event the application may be set for hearing by the commission.

An applicant may qualify in the following ways: (a) if an individual, he may qualify by personal examination or by examination of his responsible managing employee; (b) if a copartnership or corporation, or any other type of business organization, it may qualify by examination of the responsible managing officer or member of the personnel of such applicant firm. If the individual qualified by examination ceases to be connected with the permitholder, said permitholder shall notify the commission in writing within 30 days after such cessation. If notice is given the permit shall remain in force a reasonable length of time in order that another representative of applicant may be qualified before the Public Utilities Commission. If the permitholder fails to notify the commission of such cessation within a 30-day period, at the end of that period the permit shall be automatically suspended.

The commission may refuse to issue a permit if it shall be shown that an applicant or an officer, director, partner or associate thereof has committed any act of constituting dishonesty or fraud; committed any act

which, if committed by a permitholder, would be grounds for a suspension or revocation of the permit; misrepresented any material fact on his application; or, committed a felony, or crime involving moral turpitude.

The commission shall issue a permit only to those applicants who it finds have demonstrated that they possess sufficient knowledge, ability, integrity and financial resources and responsibility to perform the service within the scope of their application.

No permit shall be issued unless it has been shown that applicant meets one of the following residence requirements: If an individual, applicant must have resided in the State of California for not less than 90 days next preceding the filing of the application. If a partnership, the partner having the largest percentage interest in the partnership must have resided in the State of California continuously for not less than 90 days next preceding the filing of the application. If a corporation, applicant must be a domestic corporation or must have qualified to transact business in the State of California as a foreign corporation at the time of filing the application.

The commission shall prescribe, amend, and repeal rules in accordance with law for the administration of this section. (Amended 1972, Ch. 441.)

5136. Each application for issuance of a permit under this chapter shall be accompanied by a fee of five hundred dollars ($500).

The filing fee for an application for transfer of a permit is one hundred fifty dollars ($150), except that for the transfer of each permit subsequent to the death of a permittee, and after court approval of the distribution of the estate or when it is not necessary to probate

the will or distribute the estate through court, the fee is twenty-five dollars ($25).

All fees paid to the commission under this chapter shall be deposited in the Transportation Rate Fund. (Amended 1957, Ch. 144 and Ch. 677; 1961, Ch. 411; 1967, Ch. 416; 1968, Ch. 1054.)

5138. The commission shall establish rules and regulations governing the notification of shippers of any delay in the delivery of goods beyond the date agreed to by the carrier and the shipper, if any, at the time the service was undertaken. All household goods carriers shall observe such rules and regulations and the failure so to do is unlawful. (Added 1963, Ch. 1826.)

5139. The commission may establish rules for the performance of any service of the character furnished or supplied by household goods carriers. Every household goods carrier shall observe such rules. Failure to do so is unlawful. (Added 1971, Ch. 1393.)

Article 3. Accident Liability Protection

5161. The commission shall, in granting permits pursuant to this chapter, require the household goods carrier to procure, and continue in effect during the life of the permit, adequate protection, against liability imposed by law upon the carrier for the payment of damages for personal bodily injuries, including death resulting therefrom, in the amount of not less than fifteen thousand dollars ($15,000) on account of bodily injuries to, or death of, one person; and protection against a total liability of the household goods carrier on account of bodily injuries to, or death of, more than one person, as a result of any one accident, in the amount of not less than thirty thousand dollars ($30,-

000); and protection in an amount of not less than ten thousand dollars ($10,000) for one accident resulting in damage or destruction of property whether the property of one, or more than one claimant.

The commission shall require all household goods carriers to procure and continue in effect during the life of the permit cargo insurance in the amount of five thousand dollars ($5,000). (Amended 1957, Ch. 676. Old paragraph deleted. New paragraph added on requirement for cargo insurance.)

5162. The protection required under this article shall be evidenced by the deposit with the commission covering each vehicle used or to be used under the permit applied for,

(1) Of a policy of insurance, issued by a company licensed to write such insurance in this state, or by nonadmitted insurers subject to Section 1763 of the Insurance Code, if such policies meet the rules promulgated therefor by the commission; or

(2) Of a bond of a surety company licensed to write surety bonds in the state; or

(3) Such evidence of the qualification of the household goods carrier as a self-insurer as may be authorized by the commission. (Amended 1969, Ch. 823.)

5163. With the consent of the commission a copy of an insurance policy, certified by the company issuing it to be a true copy of the original policy, or a photostatic copy thereof, or an abstract of the provisions of the policy, or a certificate of insurance issued by the company issuing the policy, may be filed with the commission in lieu of the original or a duplicate or counterpart of the policy.

5164. The protection against liability shall be continued in effect during the active life of the permit. The policy of insurance or surety bond shall not be cancelable on less than thirty (30) days' written notice to the commission.

5165. The commission may establish such rules as are necessary to enforce this article.

Article 4. Rates

5191. The commission shall, upon complaint or upon its own initiative without complaint, establish or approve just, reasonable, and nondiscriminatory maximum or minimum or maximum and minimum rates to be charged by any household goods carrier for the transportation of property subject to this chapter and for accessorial service performed in connection therewith.

In establishing or approving such rates the commission shall give due consideration to the cost of all of the transportation services performed, including length of haul, any additional transportation service performed, or to be performed, to, from, or beyond the regularly established termini of common carriers or of any accessorial service, the value of the commodity transported, and the value of the facility reasonably necessary to perform the transportation service.

5192. In the event the commission establishes minimum rates for transportation services by household goods carriers, the rates shall not exceed the current rates of common carriers by land subject to the Public Utilities Act for the transportation of the same kind of property between the same points.

5193. It is unlawful for any household goods carrier to charge or collect any lesser rate than the mini-

mum rate or greater rate than the maximum rate established by the commission under this chapter.

5194. The commission shall make such rules as are necessary to the application and enforcement of the rates established or approved pursuant to this chapter.

5195. If any household goods carrier desires to perform any transportation or accessorial service at a lesser rate than the minimum established rates, the commission shall, upon finding that the proposed rate is reasonable, authorize the lesser rate.

5196. No household goods carrier shall charge, demand, collect, or receive for the transportation of property subject to this chapter, or for any service in connection therewith, rates or charges less than the minimum rates and charges or greater than the maximum rates and charges applicable to such transportation established or approved by the commission; nor shall any such carrier directly or indirectly pay any commission or refund, or remit in any manner or by any device any portion of the rates or charges so specified, except upon authority of the commission.

5197. No household goods carrier, or any officer, or agent thereof, or any person acting or employed by it, shall, by means of known false billing, classification, weight, weighing or report of weight, or by any other device, assist, suffer, or permit any corporation or person to obtain transportation for any property between points within this State at rates less than the minimum rates or more than the maximum rates then established or approved by the commission.

5198. No person, corporation, or any officer, agent, or employee of a corporation shall, by means

of false billing, false or incorrect classification, false weight or weighing, false representation as to the content or substance of a package, or false report or statement of weight, or by any other device or means, whether with or without the consent or connivance of a household goods carrier, or any of its officers, agents, or employees, seek to obtain or obtain transportation for property at less than the minimum rates or charges or more than the maximum rates or charges established or approved by the commission.

5199. No person or corporation, or any officer, agent, or employee of a corporation, shall knowingly, directly or indirectly by any false statement or representation as to cost or value or the nature or extent of damage, or by the use of any false billing, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit or deposition, or upon any false, fictitious, or fraudulent statement or entry, obtain or attempt to obtain any allowance, rebate, or payment for damage in connection with or growing out of the transportation of property subject to this chapter, or an agreement to transport property subject to this chapter, whether with or without the consent or connivance of a household goods carrier, or any of its officers, agents, or employees. No household goods carrier or any of its officers, agents, or employees shall knowingly pay, or offer to pay any such allowance, rebate, or claim for damage.

Article 5. Reports, Records, and Inspections

5221. Each household goods carrier maintaining an office or place of business within this State and offering intrastate service shall keep therein all books, accounts, papers, and records required by the commis-

sion to be kept within this State. No such books, accounts, papers, or records shall be at any time removed from the State except upon such conditions as the commission prescribes. Carriers performing intrastate service as household goods carriers, which do not maintain an office or place of business within this State, shall make books, accounts, papers and records pertaining to such intrastate service available to the commission at its request at a place designated within this State for examination by the commission or in the alternative reimburse the commission for the actual expense of examining such books, accounts, papers, or records at the place outside of the State where such records are kept.

The commission may require annual, periodical, or special reports to be filed by all household goods carriers, prescribe the manner and form in which reports shall be made, and may require specific answers to all questions upon which the commission deems information to be necessary. The reports shall be under oath whenever the commission so requires. (Amended 1957, Ch. 394. First paragraph added.)

5222. The commission may require any household goods carrier to file with it a true copy of any contract, agreement, or arrangement between the carrier and any other carrier in relation to any traffic affected by this chapter.

5223. The commission may prescribe the forms of any accounts, records, and memoranda, including those pertaining to the movement of traffic and the receipt or expenditure of money, to be kept by household goods carriers, and the length of time the accounts, records, and memoranda shall be preserved.

5224. Where the commission has prescribed the forms of accounts, records, and memoranda to be kept by household goods carriers for any of its business, it is unlawful for any household goods carrier to keep any accounts, records, or memoranda for such business other than those so prescribed or those prescribed by or under the authority of any other state or of the United States, excepting such accounts, records, or memoranda as are explanatory of and supplemental to the accounts, records, or memoranda prescribed by the commission.

5225. The commission or its authorized employees, representatives, or inspectors shall at all times have access to all lands, buildings, or equipment of household goods carriers used in connection with the operation of their business as such carriers in this State, and also all accounts, records, and memoranda, including all documents, books, papers, and correspondence kept or required to be kept by household goods carriers.

5226. The employees, representatives, and inspectors of the commission may, under its order or direction, inspect and examine any lands, buildings, equipment, accounts, books, records, and memoranda, including all documents, papers, and correspondence kept or required to be kept by household goods carriers.

5227. Sections 5221 to 5226, inclusive, shall, to the extent deemed necessary by the commission, apply to persons having control, direct or indirect, over or affiliated with any household goods carrier.

5228. Any employee of the commission who divulges any fact or information which comes to his knowledge during the course of the examination of the accounts, records, and memoranda of household goods

carriers, except as he is authorized or directed by the commission or by a court of competent jurisdiction or judge thereof, is guilty of a misdemeanor and is punishable by a fine of not more than five hundred dollars ($500) or by imprisonment in the county jail for not more than three (3) months, or both.

Article 5.5. Estimates

5245. The commission shall establish rules and regulations controlling the estimates given by a household goods carrier to a shipper of the charges it would make to perform services covered by this chapter. All household goods carriers shall observe such rules and regulations and the failure so to do is unlawful. The commission shall make such rules and regulations as are necessary to the application and enforcement of rules and regulations established pursuant to this section. (Added 1963, Ch. 1826.)

Article 6. Proceedings

5251. Except as otherwise expressly provided, in all respects in which the commission has power and authority under the Constitution of this State or this chapter, applications and complaints may be made and filed with the commission, process issued, hearings held, opinions, orders, and decisions made and filed, petitions for rehearing filed and acted upon, and petitions for writs of review or mandate filed with the Supreme Court of this State, considered and disposed of by the Supreme Court, in regard to the matters provided for in this chapter, in the same manner, under the same conditions and subject to the same limitations, and with the same effect specified in the Public Utilities Act, so far as applicable.

5252. Service of all process and orders instituting investigation in all proceedings, complaints, investigations, or hearings brought or pending before the commission pursuant to this chapter, may be made upon any person upon whom a summons may be served, in accordance with the Code of Civil Procedure.

5253. Service of all process and orders, decisions and orders, orders and notices in all such proceedings, investigations, complaints and hearings may be made personally or by the deposit in the United States mail of a sealed envelope with postage prepaid, containing a true copy of the paper to be served and addressed to the person to be served at his last known address as shown by the records of the commission.

5254. Service by personal delivery is complete upon delivery to the person to be served of a true copy of the paper to be served. Service by mail is complete upon the expiration of four days after the deposit of the notice.

Proof of service may be made by the certificate of any officer or employee of the commission or the affidavit of any person over the age of 18 years, naming the person served and specifying the time, place, and manner of service.

5255. In all proceedings instituted by or pending before the commission pursuant to this chapter, the commission may from time to time make such interim, interlocutory, or other orders as it deems advisable. No such order shall operate as a final determination of the proceeding, and the commission may at any time thereafter make such further orders as it deems advisable with respect to the matters considered and determined in the order or to other matters involved in the proceeding.

5256. After the making of an interim, interlocutory, or other order, any party to the proceeding or any stockholder or bondholder or other party pecuniarily interested in the household goods carrier affected may file a petition for rehearing, within the time and for the reasons provided in Sections 1731 to 1736, inclusive, and the commission may act upon the petition within the time and in the manner provided therein.

5257. Any interim, interlocutory, or other order may be reviewed as provided in Sections 1756 to 1759, inclusive. Upon such review, only that portion of the record in the proceeding considered by the commission and upon which it acted in making the order sought to be reviewed, need be certified to and considered by the Supreme Court.

5258. No person shall be excused from attending and testifying or from producing any book, document, paper, or account in any investigation or inquiry by or hearing before the commission or any commissioner or examiner, or in obedience to the subpena of the commission, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of any of the provisions of this chapter, when ordered to do so, upon the ground that the testimony or evidence, book, document, paper, or account required of him may tend to incriminate him or subject him to penalty or forfeiture, but no person shall be prosecuted, punished, or subjected to any penalty or forfeiture for or on account of any act, transaction, matter, or thing concerning which, under oath, he has testified or produced documentary evidence before the commission, or in obedience to its subpena, or in any such cause or proceeding. No person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in his testimony.

5259. Whenever the commission is of the opinion that any household goods carrier is failing or omitting or about to fail or omit, to do anything required of it by law, or by any order, decision, rule, direction, or requirement of the commission, or is doing anything or about to do anything, or permitting anything or about to permit anything to be done, in violation of law or of any order, decision, rule, direction, or requirement of the commission, it may direct the attorney of the commission to commence an action or proceeding in the superior court in and for the county, or city and county, in which the cause or some part thereof arose, or in which the corporation complained of has its principal place of business, or in which the person complained of resides, for the purpose of having such violations or threatened violations stopped and prevented, either by mandamus or injunction. The attorney of the commission shall thereupon begin such action or proceeding in the name of the people of the State of California, by petition to such superior court, alleging the violation or threatened violation complained of and praying for appropriate relief by way of mandamus or injunction.

5260. Upon the filing of such a petition, the court shall specify a time, not exceeding 20 days after the service of the copy of the petition, within which the household goods carrier complained of shall answer the petition, and in the meantime the carrier may be restrained. In case of default in answer, or after answer, the court shall immediately inquire into the facts and circumstances of the case. Such corporations or persons as the court deems necessary or proper to be joined as parties, in order to make its judgment, order or writ effective, may be joined as parties. The final judgment

in any such action or proceeding shall either dismiss the action or proceeding or direct that the writ of mandamus or injunction issue or be made permanent as prayed for in the petition, or in such modified or other form as will afford appropriate relief. An appeal may be taken to the Supreme Court from such final judgment in the same manner and with the same effect as appeals are taken from judgments of the superior court in other actions for mandamus or injunction.

Article 7. Suspension and Revocation of Permits

5281. The commission may, at the request of any household goods carrier, suspend the operating permit of the carrier for a definite time during which it is unlawful for the carrier to conduct any operations as a household goods carrier.

5282. Upon such suspension of a permit the commission shall thereupon require the removal from any vehicle operated thereunder of any identifying symbols which have been placed thereon. (Amended 1965, Ch. 821.)

5283. Upon the termination of the period of suspension the commission shall restore the permit and the carrier shall again place on all vehicles the identifying symbols removed pursuant to the suspension. (Amended 1965, Ch. 821.)

5284. A permit shall remain in effect until suspended or terminated as provided in this chapter. Any permit not exercised for a period of one year shall lapse and terminate. No permit shall be sold, leased, assigned or otherwise transferred or encumbered by the holder thereof without first having secured from the commission an order authorizing the same. The commission shall not authorize any transfer of a permit

except pursuant to a finding made by the commission that the permit authorized to be transferred has not lapsed or been terminated by nonexercise as provided in this section. Any such sale, lease, assignment, transfer or encumbrance made otherwise than in accordance with the order of the commission authorizing the same shall be void. (Amended 1957. Ch. 143 extends nonuser period on lapse to one year; Ch. 1023 adds provision cannot transfer lapsed or terminated permit.)

5284.5. The commission shall only authorize a sale, lease, assignment or other transfer of a permit to a transferee who has qualified in the manner provided by Section 5135 of this code. (Added 1961, Ch. 1269.)

5285. The permit of any household goods carrier may, upon application of the holder thereof, be amended or revoked in whole or in part or may, upon complaint or on the commission's own initiative, after notice and hearing, be suspended, changed or revoked, in whole or in part, for failure to comply with any provision of this chapter or with any lawful order, rule or regulation of the commission promulgated thereunder or with any term, condition, or limitation of such permit. The right to operate under any household goods carrier permit may be suspended by the commission upon reasonable notice of not less than 15 days to the holder without hearing or other proceedings, for failure to comply, and until compliance, with the provisions of Section 5161 or with any lawful order, rule or regulation of the commission promulgated thereunder.

As an alternative to the cancellation, revocation, or suspension of an operating permit or permits, the commission may impose upon the holder of such permit or

permits a fine of not exceeding five thousand dollars ($5,000). All fines collected shall be deposited at least once each month in the State Treasury to the credit of the General Fund. (Amended 1957, Ch. 2239; 1963, Ch. 1826; 1969, Ch. 432.)

5286. After the cancellation or revocation of a permit or during the period of its suspension, it is unlawful for a household goods carrier to conduct any operations as such a carrier. The commission may either grant or deny an application for a new permit whenever it appears that a prior permit of the applicant has been canceled or revoked pursuant to Section 5285, or whenever it appears, after hearing, that as a prior permit holder, the applicant engaged in any of the unlawful activities set forth in Section 5285 for which his permit might have been canceled or revoked.

Article 8. Fines and Penalties

5311. Every household goods carrier and every officer, director, agent, or employee of any household goods carrier who violates or who fails to comply with, or who procures, aids, or abets any violation by any household goods carrier of any provision of this chapter, or who fails to obey, observe, or comply with any order, decision, rule, regulation, direction, demand, or requirement of the commission, or of any operating permit issued to any household goods carrier, or who procures, aids, or abets any household goods carrier in its failure to obey, observe, or comply with any such order, decision, rule, regulation, direction, demand, requirement, or operating permit, is guilty of a misdemeanor, and is punishable by fine of not more than five hundred dollars ($500) or by imprisonment in the county jail for not more than three months, or both.

5312. Every corporation or person other than a household goods carrier, who knowingly and wilfully, either individually, or acting as an officer, agent, or employee of a corporation, copartnership, or any other person other than a household goods carrier, violates any provision of this chapter or fails to observe, obey, or comply with any order, decision, rule, regulation, direction, demand, or requirement of the commission, or who procures, aids, or abets any household good carrier in its violation of this chapter, or in its failure to obey, observe, or comply with any such order, decision, rule, regulation, direction, demand, or requirement, is guilty of a misdemeanor, and is punishable by a fine of not more than five hundred dollars ($500) or by imprisonment in the county jail for not more than three months, or both.

5313. Every household goods carrier and every officer, director, agent, or employee of any household goods carrier who violates or who fails to comply with, or who procures, aids, or abets, any violation by any household goods carrier of any provision of this chapter, or who fails to obey, observe, or comply with any order, decision, rule, regulation, direction, demand, or requirement of the commission, or of any operating permit issued to any household goods carrier, or who procures, aids, or abets any household goods carrier in its failure to obey, observe, or comply with any such order, decision, rule, regulation, direction, demand, requirement, or operating permit, is subject to a penalty of not more than five hundred dollars ($500) for each offense.

5314. Every corporation or person other than a household goods carrier who knowingly and wilfully, either individually, or acting as an officer, agent, or

employee of a corporation, copartnership, or any other person other than a household goods carrier, violates any provision of this chapter or fails to observe, obey, or comply with any order, decision, rule, regulation, direction, demand, or requirement of the commission, or who procures, aids, or abets any household goods carrier in its violation of this chapter, or in its failure to obey, observe, or comply with any such order, decision, rule, regulation, direction, demand, or requirement, is subject to a penalty of not more than five hundred dollars ($500) for each offense.

5315. Every violation of the provisions of this chapter or of any order, decision, decree, rule, direction, demand, or requirement of the commission by any corporation or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof is a separate and distinct offense.

5316. All penalties accruing under this chapter are cumulative, and a suit for the recovery of one penalty does not bar or affect the recovery of any other penalty or forfeiture or bar any criminal prosecution against any person or corporation, or any officer, director, agent or employee thereof, or any other corporation or person, or bar the exercise by the commission of its power to punish for contempt.

5317. Actions to recover penalties under this chapter shall be brought in the name of the people of the State of California, in the superior court of the county, or city and county, in which the cause or some part thereof arose, or in which the corporation complained of, if any, has its principal place of business, or in which the person, if any, complained of, resides. The action shall be commenced and prosecuted to final judgment by the attorney of the commission.

5318. In any such action, all penalties incurred up to the time of the commencement of the action may be sued for and recovered. In all such actions, the procedure and rules of evidence shall be the same as in ordinary civil actions.

5319. All penalties recovered by the State in any action pursuant to this chapter, together with the costs thereof, shall be paid into the State Treasury to the credit of the General Fund. Any such action may be compromised or discontinued on application of the commission upon such terms as the court approves and orders.

APPENDIX "D."

BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF CALIFORNIA

In the Matter of the Investigation into the rates, rules, regulation, charges, allowances, and practices of all household goods carriers, common carriers, highway carriers, and city carriers relating to the transportation of used household goods and related property.	Case No. 5330 OSH 68 (Filed November 21, 1972)

Supplemental Opinion and Order

Decision No. 81518 issued June 26, 1973 found that Minimum Rate Tariff 4-B (MRT 4-B) should be amended to incorporate therein revised tariff rules governing the issuance of probable cost of service documents in connection with residential shipments of household goods and to provide penalties for underestimates by household goods carriers. That decision ordered that MRT 4-B shall be amended in accordance with the findings and conclusions expressed in the opinion in that decision, that specific revision of the tariff shall be accomplished by a separate order, and that such revisions shall become effective sixty days after Decision No. 81518 becomes effective.

A petition for rehearing filed by the California Moving & Storage Association stayed the effectiveness of Decision No. 81518. Decision No. 82035, issued October 24, 1973, denied rehearing and made Decision No. 81518 effective on that date.

The tariff pages attached hereto are issued in compliance with the order in Decision No. 81518. In preparing the tariff pages it became apparent that Finding 15 of that decision is unnecessary and should be deleted.

IT IS ORDERED that:

1. Minimum Rate Tariff 4-B (Appendix C of Decision No. 65521, as amended) is further amended by incorporating therein, to become effective December 23, 1973, the revised pages attached hereto and listed in Appendix A, also attached hereto, and by this reference made a part hereof.

2. Common carriers subject to the Public Utilities Act, to the extent that they are subject also to Decision No. 65521, as amended, are hereby directed to establish in their tariffs the increases necessary to conform with the further adjustments ordered herein.

3. Tariff publications required to be made by common carriers as a result of the order herein shall be filed not earlier than the effective date of this order and may be made effective not earlier than the fifth day after the effective date of this order, on not less than five days' notice to the Commission and to the public, and shall be made effective not later than December 23, 1973.

4. In all other respects Decision No. 65521, as amended, shall remain in full force and effect.

5. Decision No. 81518 is hereby amended by deleting Finding 15 therefrom.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 20th day of November, 1973.

WILLIAM SYMONS, JR.
J. P. VUKASIN, JR.
THOMAS MORAN
D. W. HOLMES
Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX "E."

Order Setting Hearing in Case No. 5330, OSH-68, Dated November 21, 1972.

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation into the rules, rates, regulations, charges, allowances and practices of all household goods carriers, common carriers, highway carriers and city carriers relating to the transportation of used household goods and related property.	Filed Public Utilities Commission Nov. 21, 1972. San Francisco Office. Case No. 5330, OSH 68.

ORDER SETTING HEARING

House Resolution 57 requests that the Public Utilities Commission investigate the problem of underestimating by household goods carriers as a competitive practice, and to promulgate orders and regulations to correct the situation by March 15, 1973.

The Commission's Transportation Division staff has undertaken further study of Minimum Rate Tariff 4-B governing the transportation of used household goods and related property and accessorial services in connection therewith. Public hearings should be held for the receipt of evidence relating to rates, rules and regulations set forth in Minimum Rate Tariff 4-B.

IT IS ORDERED that hearings in these proceedings be held before Commissioner Holmes and/or Examiner Mallory on January 16, 1973 at 10 a.m.

in the Commission's Courtroom, San Francisco, at which time and place all interested parties may appear and be heard.

Dated at San Francisco, California, this 21st day of November, 1972.

VERNON L. STURGEON
President

WILLIAM SYMONS, JR.
J. P. VUKASIN, JR.
THOMAS MORAN
D. W. HOLMES
Commissioners

SECTION 1--RULES (Continued) | ITEM

PROBABLE COST OF SERVICES (Concluded)
(Items 31 and 31.1)
(See Exception in Item 31)

3. Applies only to charges involving rates provided in Items 300 and 320.

δ(a) Charges Assessed by the Carrier Which Exceed Probable Cost of Services. The maximum total charges assessed by the carrier on a shipment for which all or part of such charges are to be paid on delivery shall not exceed by more than 2½ percent or $15.00, whichever is greater, the amount of the probable cost of services on that shipment. The carrier must relinquish possession of the shipment upon payment of the amount of the probable cost of services plus an additional 2½ percent or $15.00, whichever is greater, of the probable cost of services, plus the charges for all services and articles listed on the Addendum Order for Service.

• •

(c) Notification to Shipper of Charges. Whenever the shipper specifically requests notification of the actual weight and charges on a shipment, and supplies the carrier with an address or telephone number at which the communication will be received, the carrier shall comply with such request immediately upon determining the actual weight and charges. Such notification shall be made by telephone, telegraph, or in person and the actual cost of such notification shall be collected from the shipper. | ø31.1

4. Applies only to charges involving rates provided in Item 330.

δCharges Assessed by the Carrier Which Exceed Probable Cost of Services. The maximum total charges assessed by the carrier on a shipment for which all or part of such charges are to be paid on delivery shall not exceed by more than 10 percent or $15.00, whichever is greater, the amount of the probable cost of services on that shipment. The carrier must relinquish possession of the shipment upon payment of the amount of the probable cost of services plus an additional 10 percent or $15.00, whichever is greater, of the probable cost of services, plus the charges for all services and articles listed on the Addendum Order for Service.

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ø Change)
δ Reduction) Decision No. 82157
** Eliminated)

EFFECTIVE DECEMBER 23, 1973

Correction 189

ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA.

SECTION 1--RULES (Continued)

(1) ITEM

ADDENDUM ORDER FOR SERVICES
ø(See Exception in Item 31)

1. If at time of pickup or thereafter, the shipper asks for additional services or adds additional articles to the shipment that were not covered in the Basis for Carrier's Probable Cost of Services document, the carrier shall prepare in duplicate an Addendum Order for Service document (Item 453). Such document shall be signed by the carrier and shipper prior to the commencement of performance of any service specified therein, and the signed original delivered to the shipper prior to or at the time such service is begun. The document shall contain the following information:

   (a) Date.
   (b) Name and address of carrier or carriers.
   (c) Description of shipment (Additional only).
   (d) Description of transportation and accessorial services to be performed.
   (e) Rates and charges.
   (f) Valuation of shipment (Subject to conditions set forth in NOTE 4 - Item 150).
   (g) Insurance (Subject to conditions set forth in NOTE 5 - Item 150).
   (h) The following statements shall be placed upon the document: (In letters not less than 10 point bold, universe or Gothic.)

      (1) THIS WILL CERTIFY AND ATTEST THAT SHIPPER OR SHIPPER'S REPRESENTATIVE AS SHOWN ON ORDER FOR SERVICE NO. ___ DATED _____ WITH (CARRIER'S NAME) _____ REQUESTS THE FOLLOWING ADDITIONAL SERVICES AND CHARGES. ø 33.5

      (2) I UNDERSTAND THAT I MAY BE REQUIRED TO PAY FOR THE SERVICES REQUESTED ABOVE AT TIME OF DELIVERY. THESE CHARGES ARE IN ADDITION TO THOSE CHARGES SET FORTH ON PREVIOUS PROBABLE COST OF SERVICES DOCUMENT. CARRIER IS NOT REQUIRED TO EXTEND CREDIT IN THE AMOUNT OF THE CHARGES ACCRUED FOR THE ABOVE ADDITIONAL SERVICES.

      I HAVE READ THIS CONTRACT AND AGREE WITH THE PROVISIONS THEREOF, AND RECEIVED A COPY.

   (i) Signature of carrier and shipper or his representative.

2. The form of the Addendum Order for Service document in Item 453 will be suitable and proper.

3. The duplicate of each document issued in compliance with the provisions of this item shall be retained and preserved by the issuing carrier, subject to the Commission's inspection, for a period of not less than three years from the date thereof.

(1) Item number 33.7 transferred to Original Page 7-BBBB and subject matter as contained in Item 33.7 on First Revised Page 7-BBB transferred to Item 33.5 of this page.

ø Change, Decision No. 82157

EFFECTIVE DECEMBER 23, 1973

Correction 191

ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA.

SECTION 1--RULES (Continued)

(1) ITEM

***PENALTIES AND REPORTING OF UNDERESTIMATES**
(See Exception in Item 31)

*1. An underestimate occurs when the charge assessed by the carrier exceeds the original estimate by more than (a) 2½ percent or $15.00, whichever is greater, on distance moves involving rates in Items 300 and 320, plus the charge on the Addendum Order for Service, or (b) 10 percent or $15.00, whichever is greater, on hourly moves, plus the charge on the Addendum Order for Service.

*2. The penalty for underestimating is the difference between the charge under the applicable minimum rates, on the one hand, and the charge based on the estimate plus 2½ percent or $15.00, whichever is greater, on distance moves involving rates in Items 300 and 320 plus the charge on the Addendum Order for Service, or 10 percent or $15.00, whichever is greater, on hourly moves involving rates in Item 330, plus the charge on the Addendum Order for Service, on the other hand.

*3. Penalties for underestimates shall be paid to the Commission for deposit in the General Fund of the State of California. Each underestimate subject to a penalty shall be reported within thirty days after completion of the transportation service. The report shall be accompanied by a check or money order made payable to the Commission for the amount of the penalty imposed, whether or not the carrier has received full payment for its services.

*4. The Commission shall furnish to each carrier subject to this tariff a sample form for the information of the carrier to be used for reporting underestimates, and penalties. It is the carrier's responsibility to reproduce necessary copies of the form for its own use.

*5. Every carrier subject to the tariff shall file with the Commission a semi-annual report of its:

*ø 33.7

(a) Total number of shipments on which written estimates were given.

(b) Number of shipments on which penalties were paid because of an underestimate.

(c) Total amount of penalties paid on such underestimates.

(d) Such other information as may be required by the Commission.

The Commission shall furnish the report form, which shall be completed by the carrier within 30 days after the close of the reporting period to which it relates.

6. Every Household Goods Carrier and officer, director, agent or employee of any Household Goods Carrier who deliberately underestimates charges applicable to the carriage of goods under Minimum Rate Tariff 4-B, in order to encourage a shipper to engage its transportation services is subject to the penalties and restrictions provided in Articles 7 and 8 of the Household Goods Carriers Act. For the purposes of this rule, a deliberate underestimate shall mean the tendering of a willful and intentional quotation of probable cost of services less than that required by application of unit costs prescribed in Minimum Rate Tariff 4-B, with knowledge that the actual charges required by the tariff will be more than the amount of the quotation or estimate.

(1) Subject matter contained in Item 33.5 on First Revised Page 7-BBB transferred to Item 33.7 on Original Page 7-BBBB, as amended.

ø Change)
* Addition) Decision No. 82157

EFFECTIVE DECEMBER 23, 1973

Correction 192

ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA.

SECTION 1--RULES (Continued) | ITEM

SHIPPING ORDER AND FREIGHT BILL
ø(See Note 1)

1. A shipping document shall be issued by the carrier to the shipper for each shipment received for transportation. The shipping document shall show the following information:

   (a) Name and address of carrier.
   (b) All names, both real and fictitious, used by carrier in conducting its operations.
   (c) Identification of the name under which the particular transportation is performed where more than one name is listed.
   (d) The address of its principal place of business, designated as such, and of such local offices as may be desired where business with the public is conducted.
   (e) Date issued.
   (f) Name of each shipper and consignee.
   (g) Points of origin and destination.
   (h) Description of the shipment, and the agreed or declared valuation thereof.
   (i) Unit of measurement upon which charges are based, viz.:
      (1) Actual and minimum number of hours involved; or
      (2) Actual number of pieces; or
      (3) Actual and minimum weight.
   (j) Deductions in time, if any, and reasons therefor.
   (k) Number of helpers.
   (l) Rates and charges assessed.
   (m) Description of accessorial services performed, if any, and each separate charge therefor.
   (n) Insurance, type and amount thereof, if any, and charge therefor.
   (o) Signature of carrier, or his agent.
   (p) Such other information as may be necessary to an accurate determination of the applicable minimum rate and charge. ø130
   (q) Name, address, and telephone number of a person to whom notification provided for in Item 162 shall be given, except when this cannot be obtained from the shipper.
   (r) Preferred delivery date or the period of time within which delivery of the shipment may be expected to be made at destination.
   ø(s) Total amount of Probable Cost of Services.
   ø(t) Allowable Overage:
      (1) 2½ percent of probable cost of services or $15.00, whichever is greater, on shipments involving rates provided in Items 300 and 320.
      (2) 10 percent of probable cost of services or $15.00, whichever is greater, on shipments involving rates provided in Item 330.
   ø(u) Total charge on Addendum Order for Service.
   *(v) Maximum charge shipper shall pay when a Probable Cost of Services has been given.
   *(w) Whether payment is to be made by use of credit card.

2. The form of shipping document in Item 400 will be suitable and proper. Such form may be combined with the confirmation of shipping instructions and rate quotation document form provided such combined form and the issuance thereof are in compliance with the provisions of this item and Items 145 and 150 and properly identified as to what it purports to be.

3. A copy of each shipping document, freight bill, accessorial service document, weighmaster's certificate, written instructions, written agreement, written request or any other written document which supports the rates and charges assessed and which the carrier is required to issue, receive or obtain by this tariff for any transportation or accessorial service shall be retained and preserved by the carrier, at a location within the State of California, subject to the Commission's inspection, for a period of not less than three years from the date of issue.

øNOTE 1--The provisions of paragraphs s, t, u, v and w of this item are not applicable to transportation of used office and store fixture as described in Item 20, paragraph (a)(2).

ø Change)
* Addition) Decision No. 82157

EFFECTIVE DECEMBER 23, 1973

SECTION 4---FORMS OF DOCUMENTS — ITEM

SHIPPING ORDER AND FREIGHT BILL FOR UNCRATED USED HOUSEHOLD GOODS AND RELATED ARTICLES
ø(Items 400 and 410)

Name of Carrier _____ Bill No. _____
Address _____ Date Issued _____
Shipper _____ Consignee _____
Street Address _____ Street Address _____
City _____ City _____
Credit Card of Shipper: Name _____ Number _____
Destination telephone number and notification address if different than delivery address ___

Description of Property

AT RATES IN CENTS PER HOUR
Units of Equipment: ☐ With Driver Only ☐ With Driver and Helper

Service	Time Started	Time Completed	Deductions(1)	Time For Computing Charges	Rate	Charges
Loading						
Driving				(2)		
Unloading						
			Total			
Number of Additional Helpers						
☐ Loading						
☐ Driving				(2)		
☐ Unloading						
			Total			

AT RATES IN CENTS PER PIECE (5 Pieces or Less) — ø400

Number of Pieces	Rate for First Piece	Rate for Each Additional Piece	Charges
		Total	

AT RATES IN CENTS PER 100 POUNDS

Weight	Miles	Tariff Rate Item	Rate	Charges

OTHER SERVICES AND CHARGES (3)	Charges

INSURANCE, TYPE AND AMOUNT	Charges

Rates for the above described property are based upon a valuation of _____cents per pound, per article. — Total to Collect

Shippers preferred arrival date or period _____

Shipper _____ By _____

Received by consignee in good condition, except as noted: _____ By _____

Received by carrier in good condition, except as noted: _____ By _____

(1) Show time not chargeable, such as time for meals. Any deduction must be fully explained.
(2) Show double the driving time, except when more than one shipment transported on a single unit of equipment, show not less than _____ minutes actual time.
(3) Show each charge separately and what it represents.

(Concluded in Item 410)

ø Change, Decision No. 82157

EFFECTIVE DECEMBER 23, 1973

Correction 190

ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA.

SECTION 4---FORMS OF DOCUMENTS (Continued) | ITEM

(1)SHIPPING ORDER AND FREIGHT BILL FOR UNCRATED USED HOUSEHOLD GOODS AND RELATED ARTICLES (Concluded)
ø(Items 400 and 410)

Total Charges	$_____	
The amount of Probable Cost of Services	$_____	
Allowable Overage:		
Total amount by which charges exceed probable cost of services over and above 24 percent on distance moves and 10 percent on hourly moves or $15.00 whichever is greater.	$_____	ø410
Total charge on Addendum Order for Service	$_____	
Maximum charge shipper shall pay when a Probable Cost of Services has been given	$_____	

I hereby authorize carrier to assign the freight charges to my credit card account (as named above).

_____ _____
Signature of shipper or shipper's representative — Date

(1) See Items 31.1 and 130 for application.

ø Change, Decision No. 82157

EFFECTIVE DECEMBER 23, 1973

Correction 199

ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA.

APPENDIX "F."

BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF CALIFORNIA

In the Matter of the Investigation into the rates, rules, regulations, charges, allowances, and practices of all household goods carriers, common carriers, highway carriers, and city carriers relating to the transportation of used household goods and related property.	Case No. 5330 OSH 68

Order Vacating the Stay of the Effective Dates of Decisions Nos. 81518, 82035 and 82157, and Modifying, as Necessary, Decision No. 82157

In Decision No. 81518 we ordered that Minimum Rate Tariff 4-B (MRT 4-B) shall be amended. The specific tariff revisions were to be accomplished by separate order but were to become effective sixty days after the effective date of Decision No. 81518. However, pursuant to the timely filing of a petition for rehearing by California Moving & Storage Association, Inc., et al. (CMSA), the orders of Decision No. 81518 were suspended (Public Util. Code, Section 1733).

On October 24, 1973 we denied the petition for rehearing by Decision No. 82035. This decision provided that ". . . [t]he effective date of Decision No. 81518 is the date of this order." On November 20, 1974 we issued Decision No. 82157. Decision No. 82157 constituted the "separate order" contemplated

by Decision No. 81518 and amended MRT 4-B by incorporating therein the specific tariff revisions ordered in said Decision No. 81518. These revisions were to become effective December 23, 1973.

On November 21 and 23, 1973, CMSA and Bekins Moving & Storage Co. (Bekins), respectively, filed petitions for Writ of Review with the Supreme Court of California seeking review of Decision No. 81518. On November 21, 1972, a Petition to Intervene and Request to File Points and Authorities in support of CMSA was filed by Bevan-Pearson Moving Storage, Inc., et al. (Bevan-Pearson). On December 7, 1973 the Commission issued Decision No. 82244, staying the effective dates of Decisions Nos. 81518, 82035 and 82157 pending the Court's determination of the subject petitions.

On July 17, 1974 the Court denied the Petitions for Writ of Review and the Petition to Intervene. On August 1, 1974 CMSA filed a petition with the Court seeking rehearing of the Court's July 17, 1974 order. After extending the time in which to consider this petition, the Court denied rehearing on August 28, 1974.

On September 10, 1974 CMSA filed with the Commission a petition titled "Petition of California Moving & Storage Association, et al. for a Continuance of the Commission's Order in Decision No. 82244, dated December 7, 1973, Staying the Effective Date of Decisions Nos. 81518, 82035 and 82157 Pending Determination of Petitioners' Petition for Writ of Certiorari by the Supreme Court of the United States."

Having considered each and every allegation of the petition filed by CMSA on September 10, 1974, we are of the opinion that good cause for continuing the

stay previously granted by Decision No. 82244 has not been shown. CMSA's petition must therefore be denied.

We therefore conclude that the stay of Decisions Nos. 81518, 82035 and 82157 should now be vacated, and the specific tariff revisions established thereby should now be effectuated. However, it should be noted that since the issuance of Decision No. 82157, the specific tariff pages revised by that decision have been further modified in certain respects not related to this proceeding. Accordingly, Decision No. 82157 must be modified to the extent necessary to incorporate these later changes into MRT 4-B along with the specific revisions required by Decision No. 81518.

IT IS THEREFORE ORDERED that:

1. The petition of CMSA for continuance of the stay granted by Decision No. 82244 is hereby denied.

2. Decision No. 82157 is hereby modified, as necessary, to conform to the orders hereinafter set forth in Ordering Paragraphs 4 through 8.

3. The stay granted by Decision No. 82244 is hereby vacated.

4. Minimum Rate Tariff 4-B (Appendix C to Decision No. 65521, as amended) is further amended by incorporating therein, to become effective November 23, 1974, the supplement and revised pages attached hereto and listed in Appendix A, and by this reference made a part hereof.

5. Common carriers subject to the Public Utilities Act, to the extent that they are subject also to Decision No. 65521, as amended, are hereby directed to establish in their tariffs the amendments necessary to conform with the further adjustments ordered herein.

6. Tariff publications required to be made by common carriers as a result of the order herein may be made effective not earlier than the fifth day after the effective date of this order, on not less than five days' notice to the Commission and to the public, and shall be made effective not later than November 23, 1974.

7. Common carriers, in establishing and maintaining the amendments authorized hereinabove, are hereby authorized to depart from the provisions of Section 460 of the Public Utilities Code to the extent necessary to adjust long- and short-haul departures now maintained under outstanding authorizations; such outstanding authorizations are hereby modified only to the extent necessary to comply with this order; and schedules containing the amendments published under this authority shall make reference to the prior orders authorizing long- and short-haul departures and to this order.

8. In all other respects, Decision No. 65521, as amended, shall remain in full force and effect.

This order is effective on the date hereof.

Dated at San Francisco, California, this 24th day of September, 1974.

VERNON L. STURGEON
President

WILLIAM SYMONS, JR.
J. P. VUKASIN, JR.
D. W. HOLMES
Commissioners

APPENDIX A

LIST OF SUPPLEMENT AND REVISED PAGES
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SUPREME COURT, U. S.

FILED

DEC 14 19

MICHAEL RODAK, JR.

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-581

CALIFORNIA MOVING & STORAGE ASSOCIATION, et al.,
Petitioners,

vs.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of the State of California

Brief for Respondent in Opposition

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Dated: December 14, 1974

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OPINIONS BELOW

The opinions of the California Public Utilities Commission (Commission), not yet reported, appear in the Appendix to the Petition (Pet. App. 1-29, 53-63). No opinions were rendered by the California Supreme Court. Instead, an order denying a petition for writ of review was issued July 17, 1974 (Pet. App. "G" at 64), and an order denying rehearing of the Court's order was issued August 28, 1974 (Pet. App. "H" at 65).

JURISDICTION

The jurisdictional requisites are set forth in the Petition. The Commission wishes to add, however, that an order of the California Supreme Court denying review of a Commission decision, even though rendered without opinion is an order on the merits both as to the law and the facts presented (*People v. Western Airlines*, (1954) 42 C.2d 621, 268 P.2d 723, appeal dismised, 348 U.S. 859, 99 L.Ed. 677).

QUESTION PRESENTED

Has the Commission, in establishing rules governing the voluntary act of providing estimates to shippers of used household goods, deprived household goods carriers of their rights to due process of law in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States?

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

The constitutional provisions, statutes, and regulations involved are set forth in the Petition. However, while the Commission does not take issue with Petitioners' inclusion of tariff pages with Decision No. 82157, attached as Appendix "D" to the Petition, the Commission wishes to note that Decision No. 82157, as issued, contains a number of tariff pages not included in the copy appended to the Petition.

STATEMENT OF THE CASE

On May 22, 1972 the Assembly of the State of California adopted House Resolution No. 57 which provides, in part, as follows:

> "Resolved by the Assembly of the State of California, That the Public Utilities Commission is hereby re-

quested to accumulate evidence involving its experience under its new estimating rules; to institute proceedings concerning the problem of deliberate underestimating by household goods carriers; and therefrom to develop regulations and orders which are designed to eliminate deliberate underestimating as a competitive practice; and be it further

"Resolved, That the Commision is requested to complete its investigation and to prepare and issue orders and regulations designed to eliminate deliberate underestimating by household goods carriers as a competitive practice by March 15, 1973."

Just prior to the adoption of House Resolution No. 57, the Commission had issued its Decision No. 79571 in Case No. 5330, OSH-49, (1972) 73 Cal.P.U.C. 17, in which it established rules designed to deal with the persistent problem of industrywide underestimating. In view of the Legislature's obvious feeling that these rules were inadequate to deal with the problem, as evidenced by the resolution quoted above, the Commission issued its ORDER SETTING HEARING No. 68 (OSH 68) in Case No. 5330 on November 21, 1972, (Pet. App. "E", 57-58). OSH 68 provided that hearings would be held before the Commission commencing January 16, 1973, for the receipt of evidence relating to the problem of underestimating by used household goods carriers (carriers).

Hearings were held in January and February 1973. Thereafter, the Commission issued Interim Decision No. 81183 in Case No. 5330 on March 13, 1974, wherein it established rules designed to eliminate the practice of underestimating and set further hearings for receipt of additional evidence. These further hearings were held in April and May 1973 after which the Commision issued

Decision No. 81518 on June 26, 1973 (Pet. App. "A", 1-26). In Decision No. 81518 the Commission established the rules in controversy herein.*

The rules adopted by the Commission in Decision No. 81518, as amended and supplemented, are set forth in the Petition at pages 8 and 9. However, two points should be emphasized. The providing of estimates is, first of all, completely voluntary on the part of the carrier. Secondly, the rules apply only to the providing of estimates. The minimum rates applicable to shipments of used household goods were not directly dealt with in the instant proceedings.

The chronology of the proceedings below is set forth in the Petition at pages 10 through 15. It need only be added that on November 18, 1974 the California Supreme Court denied Petitioners' November 14, 1974 filing with that Court, which requested a stay of the implementation of the rules now in controversy pending disposition of the instant petition for writ of certiorari. On November 22, 1974, Petitioners filed their application for a stay of the implementation of Commission Decision No. 81518, as amended and supplemented, with this Court. The Commission filed its memorandum in opposition thereto on or about November 27, 1974.

ARGUMENT

Petitioners argue that they were denied due process of law in two respects. First, Petitioners contend that they were deprived of procedural due process in that the Commission allegedly established new maximum rates in a

*Rehearing of Decision No. 81518 was denied by the Commission on October 24, 1973 by Decision No. 82035 (Pet. App. "B", 27-29). On November 20, 1973 the Commission issued Decision No. 82157 wherein the specific tariff revisions implementing Decision No. 81518 were issued (Pet. App. "D", 53-55).

proceeding specifically limited to estimating practices. Secondly, Petitioners contend they are being deprived of property without due process of law by the imposition of fines under the new rules which conclusively presume guilt on the part of the carrier, without any provision for a hearing.

While Petitioners' first argument has been raised and rejected at each stage of the proceedings below, Petitioners' second argument, in part, comes as a matter of first impression in its filing addressed to this Court. Though Petitioners raised a number of arguments with regard to the manner in which they were deprived of due process in the proceedings below, nowhere can the argument be found that the imposition of a fine under the new estimating rules *without a hearing* deprives Petitioners of their property without due process of law.

Notwithstanding, the Commission submits that even if this second argument had been properly raised, neither it nor Petitioners' first argument provide a basis for granting the relief sought herein.

I.

In Establishing Rules Applicable Only to the Providing of Estimates by Carriers, the Commission Has Not Specifically Dealt with the Applicable Minimum Rates.

The rules established by the Commission are applicable only to shipments wherein a carrier chooses to provide an estimate. None of the Commission's decisions involved herein amend minimum rates. Petitioners, nonetheless, argue that the Commission has established a new de facto minimum, or as Petitioners suggest, "maximum" rate, and has done so without affording the parties appropriate notice or the opportunity to present evidence as to the reasonableness of these rates. In support of their argument Petitioners submit that the Commission has previously acknowl-

edged, in a prior Commission proceeding involving household goods estimates, that a proposal limiting the charge to the shipper to the estimate plus ten percent would be an indirect attack on the minimum rate structure.

Even if such a proposal, alone, does constitute an indirect attack on minimum rates, and was for that reason once rejected by the Commission, this does not preclude its inclusion as one of the rules adopted in the instant proceedings. Thus, rules regarding estimates may indirectly affect the maximum charge that may be assessed by a carrier who chooses to provide an estimate. This does not, however, transform the proceeding into a ratemaking proceeding. Petitioners' authorities, which relate solely to ratemaking proceedings, are, therefore, not applicable to the instant proceedings.

Furthermore, the Commission does not agree that the rules established are in any way destructive of the established minimum rate structure. The concept of a maximum charge coupled with a penalty provision directly linked to the amount of deviance from minimum rates, as adopted by the Commission herein, in fact preserves the minimum rate structure by giving carriers an additional incentive to keep established minimum rates well in mind when providing estimates.

In a proceeding before the Commission held long before the procedings here at issue, the Commission found that in almost all instances carriers could provide reliable and accurate estimates with minimum rates well in mind (*California Moving & Storage Association v. Public Utilities Commission*, (1964) 63 Cal. P.U.C. 702, 709). In view of the obvious failure of carriers to do so, the Commission has merely attempted to make the provision of estimates

more reliable for shippers, while at the same time attempting to preserve minimum rates.

Petitioners acknowledge that estimates are not required, but contend that ". . . no carrier could refuse to give estimates and long remain a viable business entity . . ." (Pet., 19). The Commission submits that if estimates are as important as Petitioners suggest, this merely represents an additional reason why the public interest requires more stringent rules regarding the estimating practices of carriers.

Based on the above, Petitioners' arguments should be rejected.

II.

The Imposition of Fines by the Commission Does Not Deprive Petitioners of Their Property Without Due Process of Law.

Petitioners argue that "[t]he imposition of fines or penalties *without a hearing* . . ." (Pet., 21, emphasis supplied) and the alleged utilization of a conclusive presumption of carrier fault, deprive carriers of property without due process of law.

At the outset, the Commission must again note that Petitioners did not at any point in the proceedings below raise the argument that a hearing is required prior to the imposition of a fine. Petitioners have, by failing to raise this argument below, not perfected their right to a decision on this question by this Court (*Williamson v. Weyerhaeuser Timber Company,* (9 Cir. 1955) 221 F.2d 5, 14; *Cox v. City of Freeman,* (8 Cir. 1963) 321 F.2d 887, 891; *United States v. Vitasafe Corporation,* (2 Cir. 1965) 352 F.2d 62). This Court has, itself, previously noted that it will not consider issues which were neither raised nor considered in the proceedings below (*Monks v. New Jersey,* (1970) 398 U.S. 71, 26 L.Ed.2d 54; *Adickes v. Kress & Co.,*

(1970) 398 U.S. 144, 26 L.Ed.2d 142; *Pickering v. Board of Education,* (1968) 391 U.S. 593, 20 L.Ed.2d 811).

However, even if it were assumed that Petitioners properly presented the above argument for the Court's consideration, the Commission submits that there is no deprivation of property without due process occasioned by imposition of the fine provided for in the Commission's rules.

A hearing was held regarding the rules in controversy herein. Petitioners actively participated in these hearings and presented evidence and their own proposals as to the rules which have been adopted. Thus Petitioners' due process rights were satisfied regarding the rules that were established.

In addition, the rules provide for a hearing in the event that a deliberate underestimate has occurred. Petitioners acknowledge this fact.

Finally, the rules provide for an Addendum Order for Service whenever goods are to be shipped in addition to those specifically covered by an estimate, regardless of the reason for the addition. Thus, Petitioners' claim that shippers ". . . may deliberately conceal goods to be shipped . . ." (Pet., 25) must be rejected.

Petitioners advance no explanation of how a shipper could mislead or defraud a carrier. The Commission has in fact removed the possibility that a shipper can, for whatever reason, affect the final charge for those goods covered by the estimate. It has done so in an effort to protect the carrier. Thus, even if a presumption of fault has been placed on the carrier, it is not, in view of the above, an unwarranted presumption.

III.

There Is an Overwhelming Public Interest Involved in Implementation of These Rules.

The Commission respectfully submits that the rules of which Petitioners now complain are merely a well related means to achieve a legitimate end, the elimination of underestimating abuses which had become a frequently used, industrywide competitive tool. Perhaps the clearest statement of where the real injury will occur if implementation of these long overdue rules is further delayed, comes from the affidavit attached to Petitioners' application for stay of the Commission's decisions, which was filed with the Court on November 22, 1973.

The Affiant therein states that approximately 29.4 percent of all long distance moves for which estimates are provided involve underestimates, and implies that an even greater percentage is involved in the case of local moves. In view of the Commission's findings made long before the instant proceedings, that reliable and accurate estimates could be provided by carriers with little or no difficulty, it becomes quite clear that it is the public, and not carriers, who are sustaining the real injury by additional delay in implementation of the rules.

The Commission has responded to this problem by adopting rules which, hopefully, will prevent the perpetuation of underestimating as a competitive tool, rather than, as estimates should be, an aid to the shipper. It has done so as a reasonable exercise of the discretion vested in it for this very purpose.

Petitioners' assertions that by implementation of the rules they are being deprived of their constitutional guarantees do not, in view of the above arguments, transform the instant proceeding into one involving an important federal question.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for writ of certiorari be denied.

Respectfully submitted,

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